

Dr. Aditya Prakash



CHAKMA REFUGEES

The book on Chakma refugee has been written with its new introduction and the changing of time and situation pertaining to them. Once this problem has been the underlined news of electronic and print media but even today the problem of Chakmas are in stand still form.

The book deals with diverse aspects of Chakmas refugees in broader perspective.

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1. An Introduction .
2. Chakma: An Embattled Tribe.
3. Chakma-Hajong Refugees and their Rights.
4. Indigenous Chakma Refugees.
5. Refugees within Refugees.
6. Refugee in India.
7. Refugee Women and Children.
8. Refugees : India and International Laws.

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Dr. Aditya Prakash

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Preface

The Chakma tribe, also known as Changmas, are considered to be the largest tribe occupying the Chittagong Hill Tracts region of Bangladesh, as well as in India, where they have been settled for many generations. They have their own unique historical traditions, culture, folklore and language of Eastern Indo-Aryan origin, with the vast majority of Chakmas being followers of the Hinayana sect of Theravada Buddhism. Traditionally ruled by a king, these days the position of Chakma king – currently Devasish Roy – is more of a symbolic nature. In keeping with their ancient traditions, Chakma women wear an ankle-length cloth, known as a phinon, around their waists, while being covered above the waist with a wrapped cloth known as a hadi. Both these garments are colorfully hand woven with a variety of intricate designs. Although Chakmas distinguish themselves from surrounding groups by their language, the majority are bilingual, speaking Chakma and Bengali, with many being conversant in other regional languages of Bangladesh. The script of the Chakma language is seldom used, with Bengali script being used instead. Many members of the Chakma tribe are accomplished writers, poets and artists.

The first historical written reference to Chakma settlements in the Chittagong Hill Tracts dates right back to around 1550 AD. The Portuguese explorer and cartographer, Lavanha, indicated on the earliest surviving map of Bengal that a tribe known as Chakma was living in a settlement of the Karnafuli River. Conflicting theories abound as to the origin of the Chakmas, with the most popular and convincing theory linking Chakmas with central Myanmar (previously Burma) and Arakan, a state of Myanmar. It is believed that they were taken captive by the Arakan king after a conflict with the Chakma king. The Chakma tribe adapted to their new

circumstances and settled down to cultivate the land. Although the Chakmas are intensely protective of their ancient traditions and culture, in recent years they have found that the outside world has begun to encroach on their land as well as their heritage. In an effort to preserve their way of life and to secure the right to participate in any governmental decision making processes that affect them, the Chakmas have been outspoken and active in the international arena, but only time will tell whether the Chakma tribe will succeed in holding on to the way of life which makes them unique.

The problem of Chakma and Hajong refugees are not very new in the state of Arunachal Pradesh. It is also true that the migration is a human phenomenon and it has to accept by all the human beings throughout the universe. The problem of refugee in this universe is one of the most painful activities which happened particularly after the Second World War. Nobody wants in this universe to recognize him or her as refugee or synonym to this. The Chakma and Hajong refugees' problem is one of the most critical but contemporary problem in the region which created lots of tension between the people who claim themselves indigenous and the Chakma and Hajong refugees of Arunachal Pradesh. Civil society is completely inactive in Arunachal Pradesh to provide the basic fundamental as well as human rights. The paper particularly focuses on the various issues of the Chakma and Hajong refugees' problem as well as the working of the civil society in the state of Arunachal Pradesh. It also critically discusses the other provisions of the constitution which is directly or indirectly related to the Buddhist Chakma and Hajong refugees of the state.

This book contains the fundamental and basic information of the subject and useful for teachers, students and researchers.

—Editor

Introduction

Historical Background

There are about 30,000 Chakmas and Hajongs in Arunachal Pradesh, where they were settled way back in the 1960's, when they were displaced by the construction of a Dam across the *Borgang River* (now Karnaphuli) at *Kaptai* in the *Jummaland* (*Chittagong Hill Tracts – CHT*) and Maimansingh district of Bangladesh. Here again the political leaders Arunachal Pradesh treat them as second-class citizens. They have been denied citizenship, though the Government of India settled them there as refugees more than 43 years ago. Thousands of Hindu Bengali migrated illegally in the state Tripura and West Bengal, India from 1950 to March 1971, have been granted citizenship, while the *Chakmas and Hajongs* were accepted as refugees and settled in India by the Government, but have not yet got citizenship.

From the beginning the Pakistanis discriminated against the Chakma people, in jobs, business and education. The *Government of Pakistan* amended the 1900 Act several times, against the wishes of the Jumma people in *Jummaland*. The Government then constructed a dam on the *Borgang River at Kaptai*, inundating 1,036 square kilometres of land including the *Royal Palace of the Chakma King* and displacing about 200,000 Chakmas. It was these *Chakmas and Hajons* about 30,000 had migrated to *Arunachal Pradesh via Mizoram and Assam, India* in 1964 from the *Jummaland in East Pakistan* (now Bangladesh) and were rehabilitated by the Government of India in the then North East Frontier Agency (NEFA), now Arunachal Pradesh (AP). The Chakmas and Hajongs population is mainly concentrated in three districts of Arunachal

Pradesh i.e. *Subansiri, Lohit and Tirap* (now Changlang). The Changlang district has the majority of Chakmas and Hajongs population. At present the population is stated more than 100,000 in 2006.

Even after 43 years of their migration, they have not been granted Indian Citizenship. As per the Assam Accord of 1985, all the migrants who had settled in Assam, on or before January 1, 1966, were ipso-facto citizens of India. These migrants were facing lot of difficulties as they were not considered Indian citizens. Instead of granting citizenship, the Government of AP banned all facilities including employment, admission to schools, medical facilities, trade and business and forcefully collected their temporary ration card which given by Government. Many villages burnt into ashes as *Bijoypur, Madhupur*, etc. in 1991 by the State sponsored Student Unit. The *East India Buddhist Association (EIBA)* led by *Venerable Pragya Jyoti, General Secretary* of the organisation moved to New Delhi in order to protest and protect the Chakmas of AP. Since AP was an Union Territory, they getting every facility as Indian. Only after 1979, when AP was given State status, Chakmas and Hajongs were harassed and treated as refugees. Since 1980, no any Chakmas or Hajongs has been given employment. The Government of AP circular vide CS/PR-154/89/99, had banned the issue of ration cards to them in Changlang district. Again in 1994, the Government of AP expressed its inability to provide coverage of public distribution systems to Chakmas and Hajongs and asked them to surrender all the ration cards already held by them. Only 6-7 persons are employed in Government Service. All of them have adopted agriculture as major source of livelihood. Chakmas and Hajongs students are not getting any monetary help either from the Central or State Government as they do not possess a Scheduled Tribe Certificate.

On 27th February, 1992, *Shri M.M. Jacob*, Union Minister of State in the Ministry of Home Affairs, had answered to the Lok Sabha that in terms of Assam Accord, all person, who came and settled prior to 1 January 1966 were given Indian Citizenship. Further, he informed the House that on the basis of Assam Accord, all those who migrated prior to 1.1.1966 are deemed to be Indian Citizens and those who came after 25.3.1971 are not to be accorded

Indian Citizenship. On this basis, Chakmas and Hajongs living in Assam, Tripura and Mizoram have been recognized as Indian Citizen as well as Scheduled Tribes. Shri Jacob had reiterated the same again and mentioned,

"the general administration in the State will have to be convinced that the burden of rehabilitation of these refugees will have to be shared by the country as a whole".

On September 8, 1995, Shri Gegong Apang, Chief Minister of AP requested to the Prime Minister to take steps immediately to deport Chakma and Hajongs from the state. Government has also instigated the police department and the law and order department to help remove the Chakmas and Hajongs out of AP as soon as possible.

Between 1964 and 1969, more than 1,40,000 Chakmas, Hajongs and Hindu Bengalis came into Assam. Out of 1,40,000, about 30,000 refugees were sent to NEFA and the rest Hindu Bengalis settled them to Andaman Nicobar Island by the Government of India. Those who settled in Andaman, they got Indian citizens as well as electing a Member of the Parliament as their representative. During their settlement in 1964, the Chakmas and Hajongs have been given loans and land by the Government and State Government at one point itself recommended that these people should be given citizenship.

Again, on October, 1994 complaint regarding stoppage of ration card, ban on employment and economic blockade of the Chakma settlements was made to the National Human Rights Commission(NHRC). The NHRC had asked the State Government to submit the Report but almost after a year, there is no report. The Supreme Court heard the case of complaint and passed an interim order on 2.11.95 that they were not citizens because no citizenship had been granted but they were entitled to citizenship under a particular section of the Citizenship Act. The Supreme Court also directed in the interim order that even if they were not citizens, their lives and limbs must be protected and they are entitled to their lives and limbs and that they cannot be evicted from their own places. On 9.1.96, a final order was passed directing to the State Government (i) not to take any action to evict them except under due process of law (ii) application for citizenship

should be looked into and sent to the Central Government (iii) to give police force, Central Police for the protection of those people on the demand of State Government.

A high level committee was constituted on 29.12.95 under the Home Minister of which the Chief Minister is also a member to decide this issue and find out what needs to be done in this particular issue. The committee could not go to the State because there was no cooperation from the State Government till this review petition has been disposed of by the Supreme Court. The contention of the State Government is that they had not been consulted when these people were settled. The contention of the Chief Minister was that they had been living there for the last 31 years. Citizenship can be given to them but they should be settled outside his State.

On 3 November, 1996, the views made by the Chakmas and Hajongs that they migrated from erstwhile East Pakistan were displaced by the *Kaptai Hydro Power Project, 1964*. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other States. They were also allotted some land in consultation with local tribals. The Government of India had also sanctioned rehabilitation assistance Rs.4,200/-per family.

In recent years, relationship between citizens of AP and Chakmas and Hajongs have deteriorated, and the later have complained that they are being subjected to repressive measures with a view to forcibly expel them from the State of AP. The Chakmas have been residing in the State for more than three decades having developed close social, religious, cultural and economic ties. To uproot them at this stage would be both impracticable and inhuman.

In August, 1994, the *All Arunachal Pradesh Students Union (AAPSU)*, a student wing of the State Government demanded the expulsion of all foreigners including the Chakma/Hajong refugees from AP. The Central Government has been advising the State Government to take all necessary steps for providing security to all residents including Chakmas/Hajongs and to take steps to control the explosive and worsening situation.

On 9th January 1996, the observations of the Supreme Court in the case of National Human Right Commission Vs. State of Arunachal Pradesh and Union of India that the Judgement delivered :-

"There is no doubt that Chakmas and Hajongs who migrated from East Pakistan (now Bangladesh) in 1964 first settled down in the State of Assam and shifted to areas which now fall within the State of AP. They have settled there since the last about three decades and raised their families in the said State. Their children have married and they too have had children. Thus, a large number of them were born in the State itself. If a person satisfies the requirements of Section 5 of the Citizenship Act, he/she can be registered as a citizen of India.

The procedure to be followed in processing such requests has been outlined in part II of the Rules. According to these Rules, application for registration has to be made in the prescribed form, duly affirmed, to the Collector within whose jurisdiction he resides. Under Rule 9, the Collector is expected to transmit every application under Section 5 (1)(a) of the Act to the Central Government. The Collector has merely to receive the application and forward it to the Central Government. The Deputy Commissioner or Collector, who receives the application should be directed to forward the same to the Central Government to enable it to decide the request on merit.

The Supreme Court has further added that no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise. The State is duty bound to protect the threatened group and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas and Hajongs residing in the State without being inhibited by local politics."

The Supreme Court, accordingly, directed that -

- (i) The State of AP shall ensure that the life and personal liberty of each and every Chakmas and Hajongs residing

within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organized groups shall be repelled.

- (ii) The Chakmas and Hajongs shall not be evicted from their homes and shall not be denied domestic life and comfort therein except in accordance with law.
- (iii) The quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma and Hajongs should be dealt with by the State of AP in accordance with law.
- (iv) The application made for registration as citizen of India by the Chakmas and Hajongs shall be forwarded by the Collector or the Deputy Commissioner who receives then under the relevant Rule with or without enquiry, as the case may be to the Central Government for its consideration in accordance with law.

Present Status

In 2002, the state Government of AP granted citizenship and Scheduled Tribe status to the 90 Tibetan families of Shyo village living in Tawang district bordering China. They also had fled to AP in 1960's.

On 31st March, 2003, the Election Commission of India, notified that the Special Revision of electoral roll for enrolment of the Chakmas and Hajongs into the voter lists. The Election Commission issued the notification after the AP State Election Commission officials systematically flouted the Delhi High Court judgement of 28 September, 2000 (CPR no. 886 of 2000) for enrolment of eligible Chakmas and Hajongs voters into the electoral rolls.

While examining's 15th to 19th periodic reports (CERD/C/IND/19), it is essential to keep in mind that given the federal nature of the country, the States (provinces) have legislative and administrative powers including maintenance of law and order, education, health care etc. Therefore, indigenous/tribal peoples, the Dalits and the minorities also face discrimination because of the action of the State governments. On the denial of the applicability of Article 1 of the International Convention on the

Elimination of All Forms of Racial Discrimination, India at the outset of its reports recognizes “diverse origin” (para 3) of its peoples and India’s “ethnic, religious, linguistic and economic diversity” (para 6). After having recognized the existence of one of the grounds of racial discrimination i.e. discrimination on “ethnic origin”, it denies applicability of Article 1 of the Convention. The government of cannot probate and reprobate at the same time.

The government of India’s denial of the existence of racial discrimination is inconsistent with the directions of constitutional bodies like the Election Commission of India. In its report (para 74), the government of referred to inclusion of names of 1,497 Chakmas and Hajongs into electoral rolls in AP. With regard to the exclusion of the same Chakmas and Hajongs eligible voters from electoral rolls in AP, the Election Commission of India in its order No. 23/ARUN/2003 of 3 March 2004 held that they “have not been included in the electoral rolls mainly for the reason that they belong to the Chakma tribe/race (emphasis ours)”

Article 5 (c): Right to participate in elections

The government of India in its report highlights enrolment of 1,497 Chakmas and Hajongs voters in the electoral rolls in AP. But it does not mention that over 14,000 eligible Chakma and Hajong voters continued to be denied enrolment in the electoral rolls because of the blatant violations of the directions of the Election Commission of India by the State government of AP. The government of India also failed to mention that out of 4,627 Chakmas and Hajongs who had submitted citizenship applications in 1997-1998 pursuant to the Supreme Court of India’s judgement in the case of National Human Rights Commission versus State of AP & Another (W.P. (c) No. 720 of 1995) on 9 January 1996, the Union government of India failed to determine even a single application until today. This is a clear case of discrimination considering that the government of has been granting citizenship rights to the Hindu refugees who migrated to Rajasthan much later than the Chakmas and Hajongs.

Culture

Culturally, the Chakmas are in many ways more south-east Asian than South Asian. The traditional dress for women called

"Pinon and Hadi" and for men "Dudi and special shirt made by women".

Chakma folk literature is quite rich. It has many folklores and fables. A traditional folk song of the Chakmas is "*Ubha-geet*". Proverbs and traditional sayings are a unique feature of the Chakma language. These sayings mainly centre on farming, animals and birds, nature, society, religion and the mystery of the human body. These sayings in the Chakma language are called "*Dagwa Kadha*". The popular form of dance is characteristic of the Chakma community is called "*Bizu*". The "*Bi*" means bye and "*Zu*" welcome. It means that they farewell the old year and welcome the new year. It denotes that end of the Chakma calendar year. During this period, the Chakmas organise joins as well as individual festival in their own home. They perform singing and dancing competition to bid good-bye to the year just being ended and welcome the new year. The dance is beautifully orchestrated with the rhythm playing of what is known as "*Henggarang, Baji, Singya and Duduk*" sorts of flutes.

Economic Aspects

Traditionally, the Chakmas lifestyle was closely linked with hill agriculture or shifting cultivation (Jhum cultivation). But, the Chakmas in AP, mostly depending on plain agriculture land. Very few of them practising Jhum cultivation and living in three districts *Lohit, Subansiri and Tirap* (now Changlang). Some of them are also cultivated land in river valleys. They had a well-developed system of land rights, which differed sharply from those in the other plains areas. And also depending on trading and business with neighbouring system of Assam.

According to observers, the Chakmas living standard of cultivators in the AP is relatively high. Their production are rice and vegetables like potatoes, tomatoes, chilly, etc. were important crops. The bamboo was essential as building material. The bamboo had uses in many purposes that the Chakma lifestyle has been described as a "*Bamboo Civilisation*". At the present day, it is very difficult for them to find bamboo in the nearest, they have to go far to collect from the deep forest. As mentioned above that they are still deprived from job facilities in the state. Their problem was

intensified by the state government policy of denial of Indian Citizen. Population is increase and the scarcity of land also increased sharply, their lifestyle threatened further.

Social System

Chakmas of AP distinguish themselves from surrounding groups as *Khamtis*, *Tangsa* and *Simpos* by their language. Although there are indications that Chakmas used to speak a Tibeto-Burman language, their present language is Indo-European. It is closely related in structure to Assamese from which it differs by a distinct vocabulary. Most Chakmas are bilingual and speak Chakmas, Hindi, English and Assamese. The Chakma language has its own script, although today this is not commonly used. In AP, they are studying both English and Hindi in the school. Chakma literature runs from the oral traditions of the "*Genghuli*" singers through literary periodicals to modern poetry. Another modern art form in which Chakmas made their mark is painting.

Religion

The vast majority of Chakmas are Buddhists, and they form the largest Buddhist population in AP. The Buddhist population is the second largest groups in the state including *Chakma*, *Khamti*, *Simpo* and *Tibetan*. Integrated in their Buddhist practice are older religious elements. One of their annual highlights is the "*Bizu festival*" held in April as observed as "*New Year Eva*". The religious festival they observed as Lord Buddha birth anniversary which called "*Buddha Purnima*, *Ashari Purnima*, *Madu Purnima*, *Katincivor Dhan*", etc. Some spiritual Buddhist monks are *Late Venerable Gyanajyoti*, *Late Venerable Pandita*, *Late Venerable Vipassi*, *Venerable Priyojoti* and so on.

Chakma language

Chakma language is more the most advanced of the tribal languages in Arunachal. Some historical document as "*Puthis*" are exist in this language. One of them, "*Chadigang Chara Pala*" was written on palm leaf. This *puthi* reveals that the Chakmas originated in Nepal and after roaming about in several south-east Asian countries came to old Burma and Arakan before settling in the Chittagong Hill Tracts. Their original name was "*Thek*" in the Arakani language they were called "*Chak and Dainak*" in the dialect

Chakma language is called "*Chagma*". The alphabets of the Chakma language are similar to the alphabets of Sinhalese, Burmese, old Pali, Thailand's Khmer, Annam Laos, Cambodia and Siam. *Tara*, the scripture of the Chakmas, is written in the Burmese script. When spoken, the Chakma alphabet has a soft sound and is generally articulated from the bottom of the tongue. It is primarily based on sound and has a Chinese tone. In many respects (including philology, prosody, folklore, idioms and phonology) it is close to Pali, Assamese and Bengali. Many sounds of Pali and Burmese language are also available in the Chakma language. Efforts are now being made to write the Chakma language in the Burmese script. A book of primary reading in Chakma has also been published from Rangamati. Its author is Mr. *Nayanram Chakma*. The cinema films published in Arunachal by the Chakmas are *Haabi-Daabi* and *Tanyabi*.

There are many songs written in the Chakma language. These have been composed in colloquial Chakma. The language of the book "*Gojen Lama*" written by the Chakma famous poet "*Shivcharan*" in 1777. *Radhaman-Dhanpudi* and *Chadigang Chara Pala* are two important lyrical poems. The metres used in Chakmas and Bangla verse are almost similar. The syntax of the two languages are also identical. The numbers in Chakma language are pronounced as in Pali and Bangla. The minus symbol in Chakma is called "*Farak*", the plus symbol is "*Jora*" and the sign of multiplication is called "*Duna*". The other symbols are the same in both languages. In the Chakma language S is called "*Ek Fudo*", T is called "*Dvifudo*" and U is called "*Chan Fudo*". In conjugation and declension present day Chakma language is close to Pali, Burmese, Bangla, Assamese, Rajbangshi, Garo, Sangma and Chittagonian. This language has 6 regional forms. Within the Chakmas different clans have their distinct dialects.

Chakma people

The Chakmas, also known as the Changhma, are a community that inhabits the Chittagong Hill Tracts of Bangladesh, the North-East India and Rakhine state of Myanmar. The Chakmas are the largest ethnic group in the Chittagong Hill Tracts, making up more than half the tribal population. In Myanmar the Chakmas

are known as Daingnet people. Chakmas are divided into 46 clans or *Gozas*. A tribal group called Tongchangya are also considered to be a branch of the Chakma people. Both tribes speak the same language, have the same customs and culture, and profess the same religion, Theravada Buddhism.

Chakmas are Tibeto-Burman, and are thus closely related to tribes in the foothills of the Himalayas. The Chakmas are believed to be originally from Arakan who later on moved to Bangladesh, settling in the Cox's Bazar District, the Korpos Mohol area, and in the Indian states of Mizoram, Arunachal Pradesh, Tripura.

The Arakanese referred to the Chakmas as *Saks* or *Theks*. In 1546, when the king of Arakan, Meng Beng, was engaged in a battle with the Burmese, the *Sak* king appeared from the north and attacked Arakan, and occupied the Ramu of Cox's Bazar, the then territory of the kingdom of Arakan.

Diego de Astor, a Portuguese, drew a map of Bengal, which was published as *Descrição do Reino de Bengalla* in the book *Quarta década da Asia* (Fourth decade of Asia) by João de Barros in 1615. The map shows a place called "Chacomas" on the eastern bank of the river Karnaphuli, suggesting that this is where the Chakmas used to live at that time. The Arakan king Meng Rajagri (1593–1612) conquered this land, and in a 1607 letter to a Portuguese merchant, Philip de Brito Nicote addressed himself as the highest and most powerful king of Arakan, of Chacomas and of Bengal.

Defeated by the Arakanese, the Chakmas entered the present Chittagong Hill Tracts and made Alekyangdong, present-day Alikadam, their capital. From Alekyangdong they went north and settled in the present-day Rangunia, Rauzan, and Fatikchari upazillas of Chittagong District.

In 1666, Shaista Khan, who was then Mughal Governor of Bengal, defeated the Arakanese, conquered Chittagong, and renamed it Islamabad. However, in the early days the Mughal supremacy was confined only to the plain areas of Chittagong, and the Chakmas remained practically unaffected. After a few years, when a dispute developed between the Mughals and the Chakmas, the Mughals demanded tribute from the Chakmas for trading with Chittagong.

In 1713, peace was established, and soon a stable relationship developed between the Chakmas and the Mughals; the latter never demanded complete subjugation from the former. The Mughals also rewarded the Chakma king Sukdev, who established a new capital in his own name, in an area is still known as Sukbilash. There are still ruins of the royal palace & other establishments. Subsequently the capital was shifted to Rajanagar.

Etymology

The name *Chakma* derives from Sanskrit word *Sakthiman* or beholder of power. This name was given to Chakmas by one of the Burmesekings during the Bagan era. Burmese kings hired Chakmas as ministers, advisers and translators of Buddhist Pali texts. As employees of the king, the Chakmas wielded power in Burmese court disproportionate to their number. The Burmese people still refer Chakmas as *Sak* or *Thit* which are shortened and corrupted forms of *Sakthiman*. At one stage, the accepted name of the tribe was *Sakma*. Later it was further corrupted to *Chakma*.

The East India Company Period

Three years after the Battle of Plassey, Mir Qasim the new Nawab of Murshidabad rewarded the British East India Company with Chittagong, Burdwan and Midnapur. On 5 January 1761 the company representative Harry Verlest took over charges of Chittagong from Subedar Mohammad Reza Khan. But the Chakma king Sher Doulat Khan who was practically independent through nominally paid tribute to the Mughals, didn't accept the hegemony of the Company and their demand of taxes at enhanced rate. A protracted war started and it continued up to 1787. The East India Company launched four offensives against the Chakmas in 1770, 1780, 1782 and 1785. In 1785 the Company started peace negotiations with the then Chakma king Jan Baksh Khan, son of Sher Doulat Khan. Later in 1787 the king accepted the sovereignty of the Company and agreed to pay 500 maunds of cotton annually. The peace agreement or treaty was signed at Kolkata.

The main provisions of the treaty between the Governor General Lord Cornwallis and the Chakma king were as following

- The East India Company recognised Jan Baksh Khan as the Raja of the Chakmas.
- It was agreed that the collection of revenue was the responsibility of the Raja.
- The British Government would preserve the tribal autonomy and migration from the plains would be restricted.
- Jan Baksh Khan was bound by the treaty to maintain peace in his territory.
- British troops would remain in the Chakma territory not to terrify the Chakmas but to protect the land from the inroads of the fierce tribes.

In 1829, Halhed then Commissioner of Chittagong reaffirmed that

"The hill tribes were not British subjects but merely tributaries and we recognized no right on our part to interfere with their internal arrangements. The near neighbourhood of a powerful & stable government naturally brought the Chief by degree under control and every leading chief paid to the Chittagong collector a certain tribute or yearly gifts. These sums were at first fluctuating in amount but gradually were brought to specific and fixed limit, eventually taking the shape not as tribute but as revenue to the state".

Jan Baksh Khan shifted his Capital to a new place naming it Rajanagar, near present day Rangunia. After Jan Baksh's death in 1800, his son Tabbar Khan became king; but he died shortly. In 1802 Tabbar Khan's younger brother Jabbar Khan became King & ruled for ten years. After his death, his son Dharam Baksh Khan became king in 1812. He ruled up to 1832. After his death in 1832 without any male issue, there was chaos and the government appointed Suklal Dewan as the Manager. In the meantime Rani Kalindi, widow of Dharam Baksh Khan applied to the government to allow her to run the state affairs. The government accepted her application & in 1844 issued an order to that effect. In 1846 the annual revenue payable to the Company was refixed at 11,803.00Rs.

After the great Sepoy Mutiny in 1857, the British Government assumed direct control of the administration of India from the

East India Company along with Chittagong Hill Tracts, which was not yet formally separated from Chittagong. But the territorial jurisdiction of the Chakma Raja was fixed by a proclamation dated 6th Shraavana 1170M.S(1763 AD) by the Company as *All the hills from the Feni river to the Sangoo and from Nizampur Road in Chittagong to the hills of Kooki Raja.*

After Rani Kalindi's death in 1873, her grandson Harish Chandra became the Chakma Raja and was vested with the title Roy Bahadur.

The British Government Period

After the war with the English, the Chakmas became very weak militarily.

Since then the Kukis, who were independent tribes living further eastward used to make frequent murderous raids on the British subjects in Cachar, Noakhali, Comilla and other neighbouring tracts under Rani Kalindi. They raided Chittagong Hill Tracts and the neighbouring tracts in 1847, 1848, 1859 and 1860. As a consequence with a view to paying the necessary attention to the areas of the front areas experiencing repeated raids and to protecting the people from the aggression of the independent tribes living further east but primarily to occupy the Chakma land, the Lieutenant Governor of Bengal recommended the removal of the hill tracts from the regulation district and the appointment of Superintendent over the tribes.

Both these recommendations were adopted by an act XXII 1860AD which came into effect from 18 August of that year. Thus Hill Tracts were separated from Chittagong and a superintendent was appointed for Chittagong Hill Tracts and its headquarters was established at Chandraghona. The hills in his charge were henceforth known by the name of the Hill Tracts of Chittagong. For the next few years attention was directed to the preservation of peace of the frontier. In 1869 headquarters was shifted to Rangamati. Earlier the official designation of the post of superintendent was changed to Deputy Commissioner and full control of all matters pertaining to both revenue and justice throughout the Hill Tracts was vested in his office. With the prevailing frontier situation in the British government put pressure

on the Chakma chief to shift his capital to Rangamati and ultimately in 1874 it was shifted to Rangamati from Rajanagar. At that time cotton was heavily grown in Chittagong Hill Tracts and it was much important to the British for their mills. Hence effective control of Chittagong Hill Tracts was also important for them.

In 1881 the government decided to divide Chittagong Hill Tracts into three circles and the rulers were designated as chiefs. The circles are

- Chakma Circle
- Bohmong Circle
- Mong Circle.

Each circle was headed by a chief. Chakma circle was headed by a Chakma, Bohmong circle by a Bohmong and the Mong circle by a Mong. The Chakma circle was centrally located and inhabited mainly by the Chakmas, the Bohmong circle was under the subjection of the Bohmong chief of Arakanese extraction/origin and the Mong circle was also inhabited by the Arakanese speaking clans with a sprinkling of Tripura immigrants and headed by another ruler of Arakanese extraction. The reason of this division was that the British government was not in favour of the strong power of the Chakma Chief who held control over these hilly tribes. Further the government was feeling increasingly concerned about the political and administrative affairs of these tracts. Hence they aimed firstly to lay the foundation of administration in a restricted manner with the following basic objectives –

- To keep supervision on the rule of the Chakma chief and also to curtail some of his powers.
- To protect the British subjects from the Kuki menace
- To preserve peace in the frontier areas so that peace prevailed in Chittagong Hill Tracts and cotton could be grown and made available for their mills.

After the creation of a separate district and also three circles, the Kuki menace to Chittagong Hill Tracts and other adjoining areas did not stop. The Shendus, another ferocious tribe made occasional raids in the Hill Tracts between 1865 and 1888 and killed many people including massacre of Lt. Steward and his survey party. In 1872, 1890 military offensives were launched

simultaneously into Lushai Hills from Chittagong and Burma in collaboration with the governments of Bengal, Assam and Burma and the whole of Kookie land was brought under British control.

On 1 April 1900, the South and the North Lushai Hills (then a part of Chittagong Hill Tracts) were merged to form a district of Assam province with headquarters at Aizawl. Lushai hills are now the present day Mizoram state of India. Due to revision of the boundaries, the Chakma chief had to forge some of his lands as also the subjects.

Later the British through the Deputy Commissioner took over absolute power in Chittagong Hill Tracts including the Chakma circle after implementation of the Chittagong Hill Tracts manual. Chittagong Hill Tracts was again declared as an *Excluded Area* under the British India act of 1935.

Modern times

Like in India in Mizoram & Tripura State, the Chakmas have lived in the modern state of Bangladesh much before it gained its independence. However, recent migrations of ethnic Bengalis into traditionally Chakma regions of Bangladesh have raised tensions in the Chittagong Hill Tracts. Successive governments have dealt forcefully with Chakma uprisings, and finally ended the conflict with The 1997 Peace Treaty. This forceful dealing and the construction of Kaptai Dam by then East Pakistan government in Chakma areas submerged cultivable lands and displaced thousands, resulted in the migration of a large population of Chakmas into Diyun the state of Arunachal Pradesh of the present Indian Union. The Chakmas now have representations in the Mizoram General Assembly, Tripura Legislative Assembly and Tripura Tribal Area Autonomous District Council. The only seat of political power and identity is the Chakma Autonomous District Council in India, though it covers only 35% of the Chakmas living in Mizoram State in India. There are another 80,000 Chakmas in Rakhine state of Myanmar. The Chakmas in Myanmar are known as Daingnet people.

Religion

The vast majority of the Chakma are followers of Theravada Buddhism, a religion that they have been practising for centuries.

In the past Lories (a sect of Buddhist priest) used to perform all religious rites in the Chakma society. They used to follow a religious book called Agartara. The language of these is nothing but the corrupt form of Pali text of the Holy Tripitaka. The Lories are still found in remote rural areas, but their numbers began to decline due to rise of monastic form of Buddhist order in the society. At present it is the Buddhist monks who play vital role in religious matters in Chakma social life.

Language

Originally speaking a language belonging to the Tibeto-Burman family, some of the Chakmas have been influenced by neighboring Chittagonian, an Eastern Indo-Aryan language closely related to Bengali. Many linguists now consider the modern Chakma language (known as *Changma Vaj* or *Changma Kodha*) part of the Southeastern Bengali branch of Eastern Indo-Aryan language. Changma Vaj is written in its own script, the Chakma script, also known as *Ojhopath*. Chakma language is written in an alphabet which allowing for its cursive form, is almost identical with the Khmer and the Lanna (Chiangmai) characters, which was formerly in use in Cambodia, Laos, Thailand and southern parts of Burma.

Culture

The Chakma's are a people with their own culture, folklore, literature and traditions. The Chakma women wear an ankle length cloth around the waist which is also called *Phinon* and also a *Haadi* wrapped above the waist as well as silver ornaments. The *Phinon* and the *Haadi* are colourfully hand weaved with various designs. The design is first embroidered on a piece of cloth known as *Alaam*.

Festivals

The most important festivals celebrated by the Chakmas are Bizhu and Buddha Purnima.

Bizu

Bizu is the most important socio-religious festival of the Chakma. This festival gave birth to the Bizu dance. The festival lasts for three days and begins on the last day of the month of Chaitra. The first day is known as *Phool Bizu*. On this day,

household items, clothes are cleaned and washed, food items are collected to give the house a new look with the veil of different flowers. The second day known as *Mul Bizu* day starts with the bath in the river. People wear new clothes and make rounds of the village. They also enjoy specially made vegetable curry known as *Pachonton*, different homemade sweets and take part in different traditional sports. The day ends with the *Bizu* dance. The last day, which is known as *Gojjepojje din* involves the performances of different socio-religious activities. In the context of its nature some say that *Bizu* is a festival, which revolves around agricultural activities. Because, it is celebrated in mid-April when the earth is just drenched with the first rain and the *jhum* sowing is taken up. And it is believed that with the objective of getting rich harvest worship of the earth was arranged which later on took the form of a festival. However of late it has lost its agricultural character.

Buddha Purnima

It is celebrated on the full moon day in the month of Baisakh. It actually encompasses the birth, enlightenment (*nirvâna*), and passing away (*Parinirvâna*) of Lord Buddha. On the day of the worship devotees go to the monastery with *Siyong* (offerings of rice, vegetable and other fruits and confectionaries). The Buddhist priests known as *Bhikshus* lead the devotees for chanting of mantra composed in Pali in praise of the holy triple gem: The Buddha, The Dharma (his teachings), and The Sangha (his disciples). Apart from this, other practices such as lighting of thousands of lamps, releasing of *Phodona* (an auspicious lamp made of paper in the form of a balloon) are also done as and when possible.

Chakma Septs or Goza

The Chakmas or Changmhas have only forty gozas or septs. They are :

1. Anghu or Amhoo
2. Baburo
3. Boga
4. Bongsha or Wangjha
5. Borbwa or Borwa
6. Bar Bungo

7. Guro/Chigon Bungo
8. Bor Chege
9. Chege (Rwa Chege, Bhwa Chege, Bannya Chege,)
10. Mhulheema Chege
11. Khyang Chege/Khyangya or Khyangjoy
12. Chadonga or Chadogo
13. Chekkoba or Chekkaba
14. Dachchya or Dhachchya
15. Dhamei or Dhavenga
16. Haia or Hoia
17. Hedoga
18. Bor Kambhe or Bor Kammhei
19. Guro Kambhe or Chigon Kammhei
20. Kudugo
21. Kurho Khuttya or Kurho Kuttya
22. Kngha
23. Larma
24. Lakchara
25. Lebha
26. Mhulheema
27. Pwa
28. Bor Phaksa
29. Guro Phaksa or Chigon Phaksa
30. Pugho or Pumha
31. Phema
32. Padugo
33. Pittingya or Pittinghya
34. Pedangchhuri or Pedangsari
35. Rangi
36. Tonnya
37. Phedungsa Tonnya
38. Puran Teyha

39. Nwa Teyha, and

40. Uchchari.

It is further to state that there is no letter of English F. Hence, Ph should be used for writing a Changmha word

Bengali Muslim Settlers

The abolition of special status in 1964 opened up the Chittagong Hill Tracts (CHT) to outsiders. Bengali Muslim families started settling there in numbers large enough to alarm the Jummas, who felt that it was official government policy to outnumber them on their own land. Grounds for this fear could be seen in the industries like Kaptai hydroelectric power station, Chandraghona paper mill whose founding in the CHT coincided with the influx of Bengali Muslims who were given preferential employment.

Secret Meeting

Eight years after the independence of Bangladesh, President Ziaur Rahman presided at a secret, mid 1979 meeting during which it was decided to settle 30,000 Bangladeshi families during the following year. The importance of the meeting was emphasized by the attendance of Deputy Prime Minister Jamaluddin, Home Minister Mustafizur Rahman, the commissioner of the Chittagong division and the deputy commissioner of the CHT. A sum of Taka 60 million was allocated to the scheme, but the budget heading under which this state money was provided was not disclosed. As a result of the meeting, implementation committees, made up of government officers and leading Bangladeshi settlers, were formed at district and sub divisional levels. The district commissioner headed the district committee and sub divisional officers the sub divisional committees. The committees appointed agents from among the Bangladeshi settlers and assigned them to contact land less Bangladeshis willing to settle in the CHT. These were not hard to find and from February 1980 truckloads of poor Bangladeshi families poured into the CHT attracted by the government scheme to provide five acres of land, Taka 3,600 to each new settler family. According to USAID in July 1980, the government decided to resettle 100,000 Bangladeshis from the plains in the CHT in the first phase of this scheme.

Government Sponsored Migration

From the government's viewpoint the settlement plan was successful from the start. By 1980 the Feni valley which borders on Tripura contained about 18,000 Bangladeshi families and roughly 1,500 Jumma families. There are now even fewer Jumma people left and those who remain are eager to leave. Myani valley in the northern part of the CHT contains 40,000 indigenous people and about 10,000 Bangladeshis, a large number of whom arrived in the valley in 1980. In Chengi valley the Bangladeshi settlements received 1,500 families between 1978 and 1980. By the same date there were 1,000 Bangladeshi families at Kaptai and 5,000 families in Rangamati sub-division of which 3,500 families alone settled at Kalampati. In the southern part of the CHT, the Lama <i>thana</i> had about 3,000 Bangladeshi families and even more were settled at Nakyangchari. In Rangamati town, in 1980, the Jummas were accounted for about 30 per cent of the population. The Bangladesh Government initially denied its settlement program, however in May 1980 the government confirmed its policy towards the Chittagong Hill Tracts and started actively to encourage settlers to move there. A secret memorandum from the commissioner of the Chittagong Division to government officials in other districts stated that it was "the desire of the government that the concerned deputy commissioners will give top priority to this work and make the program a success". During 1980 some 25,000 Bangladeshi families were settled in the CHT. At the same time thousands of Jumma families, dispossessed by the Kaptai dam project in the early 1960s, were still attempting to get some kind of monetary or land compensation. Under the second phase of the plan each land less settler family received five acres of hill land or four acres of mixed land or 2.5 acres of wet rice land. They also received two initial grants of Taka 700 altogether, followed by Taka 200 per month for five months and 24 lb. of wheat per week for six months. In July 1982 a third phase of Bangladeshi settlement was authorized under which a further 250,000 Bangladeshis were transferred to the area.

Dispossession Of Jumma Land

The Bangladeshi settlers, with the connivance of the almost totally Bangladeshi administration, have been able to take over

land and even whole villages. There is a severe population pressure on land in Bangladesh generally and Jumma land had been regarded as readily available.

One excuse often given for allowing or encouraging this immigration is the relatively low population density in the CHT. The United States Agency for International Development (USAID) had noted that "the Chittagong Hill Tracts are relatively less crowded than the plains of Bangladesh.

Because of this difference in population densities, there has for some time been a migration from the crowded plains to the hills". In 1967, a study commissioned by Dhaka, however concluded that "as far as its developed resources are concerned, the hill tracts is as constrained as the most thickly populated district...

The emptiness of the hill tracts, therefore is a myth". Only 5 per cent of land outside forest reserves is suitable for intensive field cropping. In spite of the shortage of farming land in the tracts, the government has succeeded in attracting many thousands of land less Bangladeshis.

To be land less in Bangladesh is to be absolutely poor and dependent. Jobs are seasonal, insecure, and pay is enough for subsistence only. An agricultural labourer receives about five Takas a day when he is working and is usually unemployed for about six months of the year. For the overwhelming majority of Bangladesh's rural population there is little hope to escape from constant poverty.

The settlement plans offer an opportunity which no land less or poor Bangladeshi family can ignore. The land however unarable, and the money and food grants, however depleted by corrupt officials, can mean survival for six months or more for poor Bangladeshi peasants. The Bangladeshi peasants who move to the Chittagong Hill Tracts come principally from the plains districts of Chittagong, Noakhali, Sylhet and Comilla, and have no experience of hill slope cultivation.

When they find they cannot make a living from the land they have been given they encroach on Jumma owned land. There were various ways in which the Jumma people have been, and still are being dispossessed of their lands. In many cases, Bangladeshi

settlers move into an area and gradually encroach on the lands of their Jumma neighbours. A Chakma refugee from Panchari describes the initial process as follows:

"In 1980-81 the Bengalis moved in. The government gave them rations of rice etc. and sponsored them. The settlers moved into the hills, then they moved the Jummas by force with the help of the Bangladesh Army. The Deputy Commissioner would come over and say that this place was suitable for settlers so Jumma people must move and would receive money in compensation. But in reality they did not get money or resettlement. In 1980 the Jumma people had to move by order of the government".

Attacks on Jumma peoples' villages are the most common way to evict the inhabitants from their lands. A Tripura refugee in India from Bakmara Taindong Para near Matiranga described what happened to his village in 1981 when the settlers moved into his village:

"Muslims from different parts of Bangladesh were brought in by Bangladeshi authorities. Before that our village was populated only by Chakma, Tripura and Marma. With the assistance of the government these settlers were rehabilitated in our village and they continued to give us troubles..they finger at the Jummas and the army beats them and rob.

They took all the food grain. Whenever we seek any justice from the army we don't get it. All villagers lived under great tension due to various incidents all around. Three days after an incident when six persons had been killed, just before getting dark, many settlers came to our village, shouting '*Allah Akbar*' (Allah is Great). When they arrived we escaped so the settlers got the opportunity to set fire".

A Chakma refugee in Tripura told what happened to his village in 1986:

"I lost my land. Settlers came and captured my land. They burnt our houses first. They came with soldiers. This took place on 1st May 1986 at Kalanal, Panchari. My house was in a village with a temple. The whole village of 60 houses was burnt. After seeing this we ran through the jungles and eventually reached India, coming to Karbook camp."

The following interview refers to events which took place on 21 November 1990:

"Muslim settlers wanted to take us villagers to a cluster village (concentration camp), but we refused to go there. The villagers were beaten up by the Muslim settlers of which three families managed to escape, one of which is mine. These three families came to Kheddarachara for 'jhum' cultivation. We stayed there for one and a half years.

The day before yesterday the Muslim settlers came to the same village and rounded up the households. The settlers were accompanied by Bangladeshi soldiers. I took shelter in a nearby latrine when the villagers were rounded up. Later I tried to leave the latrine to go somewhere else.

The village had been surrounded. As I was trying to escape, the Muslim settlers shot me. It was a singled barreled shot gun. The incident took place in the early morning around 6 o'clock. After getting the bullet injury I ran away into a safe place. I don't know what happened to the other villagers. I ran away from the place for about half a mile. Then I fainted and lost consciousness. Two refugees went there to collect indigenous vegetables and brought me to the camp about 10 o'clock. I have been twice attacked to be taken to a cluster village, the second time I was shot." Violence, intimidation and arson are the main methods used by the both the Bangladesh Army and the Bangladeshi settlers to force the hill people to leave their villages. Entire villages have been forced to flee from their lands.

Settlement Is A Political Act

Landlessness is on the increase in Bangladesh in general. Land ownership has become increasingly concentrated and now 10 per cent of the population owns 50 per cent of available land. There has been no will on the part of any Bangladeshi government to assist land less labourers or marginal farmers anywhere in the country. Indeed organizations of land less people are often put down with the utmost brutality by hoodlums hired by local landlords, the police, the army, or by all three. The government's power rests with the middle and upper classes in the urban areas and with rich farmers. The Bangladeshi poor will seize any survival

chance they are presented with. Illiterates have limited horizons and they are not fully aware that the government's scheme to settle them in the CHT is not essentially an attempt to improve their lot. It is a political act to nullify the question of Jumma peoples' rights of self determination by increasing the number of Bangladeshis in the CHT to majority.

Settlers Used As Cannon Fodder

The Pakistani government instituted a settlement plan in the Feni valley bordering India because it distrusted the Jumma people living there. Bangladeshi governments have similarly used poor Bangladeshis against the Jumma people as cannon fodder. There seems to be a determination to destroy Jumma society and if necessary the Jumma people. Illiterate Bangladeshi peasants who, under this scheme move to the CHT, know nothing of the Jumma situation. All they know is that the government has given them land and is prepared to assist or at least to turn blind eye to encroachment on Jumma land.

Government's Constitutional Argument

The government argument is that settlement in the CHT is necessary because much of the land there is uncultivated and therefore in their view wasted. Furthermore Dhaka maintains that "it would be against the constitution to prevent any Bangladeshi from settling or buying land in any part of the country". This argument takes little account of the economic or political realities of the CHT, where little of the land is suitable for farming and where the traditional owners are coerced into giving up their property. As an example India could have used the same argument in the Muslim majority state of Kashmir, where most of the land like the CHT is empty. By settling people from overcrowded part of the country to Kashmir India could have altered the demographic profile of Kashmir from Muslim majority to Hindu majority state. But Indian constitution forbids settlement in areas like Kashmir, Arunachal Pradesh, Mizoram etc., because of their distinct cultural, religious and ethnic background.

Wider Political Objective

A direct result of the settlement scheme works to wider political advantage of Dhaka. The conflict between the poor Bangladeshis

and the Jumma people for a tiny proportion of the total land distracts attention from the general situation of landlessness in Bangladesh. In the CHT, this struggle has polarized the Bangladeshis and the Jumma people. The Bangladeshi settlers, in collaboration with the Bangladesh Army and Police harass the Jumma people. Civil suits taken out by Jumma people have increased substantially but, since the judiciary is manned mainly by the Bengali Muslim officials, they have been unsuccessful. Resulting from this, Jumma families have been forced to leave their homesteads and become land less.

Chakma : An Embattled Tribe

Chakma Culture

Orientation

Identification. The Chakma speak a dialect of Bengali or Bangla, live in southeastern Bangladesh, and are predominantly of the Buddhist faith. Although they are generally known in the anthropological literature as Chakma—and are officially so termed in Bangladesh—they usually call themselves Changma.

Location. Bangladesh is located between 20° 34'2" and 26° 38'2" N and 88° 0'12" and 92° 4'12" E. Chakma (and another eleven ethnic minority peoples) occupy three hilly districts of Bangladesh—Rangamati, Bandarban, and Khagrachhari. This hill region is cut by a number of streams, canals, ponds, lakes, and eastern rivers; it covers a total area of about 13,000 square kilometers. Some Chakma also live in India.

Demography. According to the 1981 census the total Chakma population in Bangladesh was 212,577, making them the largest tribal group in Bangladesh. In 1971 a further 54,378 Chakma were enumerated in neighboring Indian territory. They constitute 50 percent of the total tribal population of the southeastern hill region, although there are also many Bengali-speaking (nontribal or originally plains) people in the region who migrated there at various times in the past. As a result, Chakma now constitute less than 30 percent of the total population of that region. In 1964, this region lost its officially designated tribal status, and as a result many People from the plains migrated there.

Linguistic Affiliation. The Chakma speak a dialect of Bangla (Bengali), which

they write in the standard Bangla script. (This is the mother tongue of almost 99 percent of the total population in Bangladesh—i.e., of some 110 million people.) However, it seems likely that the Chakma once spoke an Arakanese (Tibeto-Burman) language, which they later abandoned in favour of the Indo-European tongue of their Bengali neighbours. The Chakma writer Biraj Mohan Dewan gives a figure of 80 percent for the Bangla-derived Chakma vocabulary.

History and Cultural Relations

Scholars differ on the origin and history of Chakma. One popular view among the Chakma is that their ancestors once lived in Champoknagar, although opinions differ as to its location. It is also guessed that the Chakma derived their name from Champoknagar. According to oral history the Chakma left Champoknagar for Arakan in Burma where they lived for about 100 years. They had to leave Arakan for Bangladesh in or around sixteenth century, when Bangladesh was governed by Muslim rulers, before the arrival of the British. Even if we do not believe the story of their origin in Champoknagar, we have reason to believe the Chakma lived in Arakan before they migrated to Bangladesh. They were then nomadic shifting cultivators. On their arrival in Bangladesh the Chakma chiefs made a business contract with the Muslim rulers, promising to pay revenue or tax in cotton. In return they were allowed to live in the hill region and engage in trade with the larger society. By the late eighteenth century, British authorities had established themselves in the southeastern districts of Bangladesh. The British formally recognized a definite territory of the Chakma raja (the paramount chief). In 1776, Sherdoulat Khan became the Chakma raja. He fought unsuccessfully against the British. Further fighting between the Chakma and the British took place between 1783 and 1785. In 1787, Raja Janbux Khan, son of Sherdoulat Khan, made a peace treaty with the British government, promising to pay the latter 500 *maunds* of cotton. The British recognized the office of Chakma raja throughout the rest of their rule. Different Chakma rajas maintained good relations with the authorities of central administration and the Chakma increasingly came in contact with the Bengali people and culture.

Settlements

Traditionally the Chakma build their houses about 1.8 meters above the ground on wooden and bamboo piles. With the increasing scarcity of bamboo and wood, they have started to build houses directly on the ground in the Bengali style. The Chakma have a settled village life. A family may build a house on a separate plot of land. A few families also build houses on the same plot of land. These units (clusters of houses) are known as *bari* (homestead). A number of *bari* constitute a hamlet (*para* or *adam*). A number of hamlets make up *agram* or village. This is also known as a *mouza*, a "revenue village." Most houses are built on the slopes of the hills, usually near streams or canals.

Bamboo is widely used in making houses. The pillars are made of bamboo (or wood); the platform (above the ground) and walls are also of bamboo. The roof is made with bamboo and hemp. A very few Chakma have started using tin for making roofs.

Economy

Subsistence and Commercial Activities. The economy is based on agriculture. Chakma farmers utilize three different microenvironments: flat lands, which can be irrigated, slightly higher lands, which are not usually irrigated; and relatively steep highlands. Each microenvironment is utilized for the cultivation of specific crops. In the irrigated lowlands, the Chakma grow wet rice. Here, plowing is done with a single metal-blade wooden plow drawn by bullocks or water buffalo. The Chakma who learned plow agriculture from Bengalis in the mid-nineteenth century grow wet rice twice a year on the same land. The crop is harvested by hand with the help of sickles. On slightly higher lands the Chakma cultivate a variety of crops. These include root crops such as taro, ginger, and turmeric, some vegetable crops, and pulses, chilies, garlic, and onions. In the hills, they cultivate mainly dry paddy, sesame, and cotton. These crops are grown by the traditional method of shifting cultivation. Men select land for swiddens in December-January; clear off the trees and bush in February-March; burn this debris by April when dry; and start sowing after a heavy rainfall, usually in April-May. They fence their swidden fields to protect crops from pigs, cattle, goats, and buffalo and begin to

harvest crops in October, continuing into November. Because of increasing population pressure, shifting cultivation is gradually being limited. The government also discourages swidden agriculture. Instead it has been trying to motivate the Chakma and other hill peoples to grow fruits such as pineapples, bananas, and jackfruit on the hills. Many Chakma have started doing so. Silviculture (i.e., planting of timber and rubber trees) is also becoming popular.

Hunting, fishing, and collecting of different edible leaves and roots are also part of their economy. Around their houses, the villagers grow vegetables. Domestic animals include pigs, fowl, ducks, cattle, goats and water buffalo.

Industrial Arts. The Chakma weave their own cloths and make bamboo baskets of various types.

Trade. Surplus products are brought to the markets. Some Chakma supply products to the nontribal businessmen who buy cheap, store, and then sell dear; or they supply the cities for a higher price.

Division of Labor. Traditionally the Chakma women cook, tend babies, clean house, fetch water, weave, and wash cloths. The men assist them in tending babies and fetching water from the canals or from waterfalls. The women also do all agricultural work side by side with the men, except for plowing and cutting big trees for shifting cultivation. They also buy and sell in the marketplace.

Land Tenure. There was no private ownership in land even in the early twentieth century. The Chakma were at liberty to choose any hill land for swiddens or flat land (between the hills) for wet rice cultivation. The Chakma and other hill peoples are now required to take grants of land from the Government and to pay a land tax to the government. The Chakma raja traditionally received a small portion of tax on swidden land.

Kinship

Kin Groups and Descent. The *paribar* (family) is the basic kinship unit in Chakma society. Beyond the *paribar* and *bari* (homestead), multihousehold compounds are the next widest unit, the members of which may form work groups and help each other in other activities. Next are the hamlets, comprised of a number

of bari. They form work groups for Economic activities requiring travel, such as swidden cultivation, fishing, collecting, etc. Hamlet people are organized and led by a leader called the *karbari*. The village is the next larger group who arrange a few rituals together. Descent among the Chakma is patrilineal. When a woman marries, she leaves her own family and is incorporated into that of her husband. Property is inherited in the male line. Despite the patrilineality, some recognition is given to maternal kin. For example, an individual's mother's family will participate in his or her cremation ceremony.

Kinship Terminology. The patrilineal nature of the Chakma kinship system is partially reflected in the kinship terminology. Thus, different terms are used to address a Father's brother and a mother's brother and to address a Father's sister and a mother's sister. On the other hand, in the grandparental generation the distinction between paternal and maternal kin disappears, with all grandfathers being called *aju* and all grandmothers *nanu*. In the first descending generation, there is again no distinction between patrilineal and other types of kin. Thus father's brother's children, Father's sister's children, mother's brother's children, and mother's sister's children are all termed *da* (male) and *di* (female).

Marriage and Family

Marriage. Polygynous marriages are permissible among the Chakma, although they are less common today than in the past. Marriages are usually arranged by the parents, but opinions of potential spouses are considered. If a boy and girl love each other and want to marry, the parents usually give their consent provided the rules of marriage allow them to do so. Chakma rules of exogamy forbid marriage between people belonging to the same *gutti* (or *gusthi*). This *gutti* may be defined as a patrilineage whose members traditionally traced descent from a common ancestor within seven generations. However, early in the present century a Chakma prince, Ramony Mohon Roy, took for his wife a woman related to him within five generations, both being descendants of the same great-grandfather. Following this example, it has now become common for marriages to be allowed with anyone not patrilineally related within four generations. The *gutti*

seems to have been redefined accordingly. In more recent times, Chakma still say that marriage should not take place within the gutti, and yet it sometimes happens that second cousins (the descendants of the same great-grandfather) are permitted to marry. Virilocal residence after marriage is the norm and people do not look favorably upon uxorilocal residence; however, rare instances of uxorilocal residence have been reported.

Domestic Unit. The family (*paribar*) usually comprises a husband and wife, together with their unmarried children. However, there are instances of married sons with their wives and children living together with their parents in one *paribar*. Usually all members of the *paribar* occupy a single *ghar* or house. However, if a *paribar* expands to the point where it is impossible or uncomfortable for all members to live under the same roof, one or two annexes may be added at the side of the main building. But even when the *paribar* members live under separate roofs, they continue to cook and eat together.

Inheritance. Property is divided equally among the sons. The daughters usually do not inherit. Usually a younger son who cares for his parents in their old age receives the Homestead in addition to his share. **Socialization.** Infants and children are raised by both Parents and siblings. In a three-generation family, grandparents also take active roles in socializing and enculturating the children. They are taught Buddhist ideology at an early age. Respect for elders is stressed.

Sociopolitical Organization

Social Organization. Chakma society is hierarchically organized on the basis of age, sex, occupation, power, religion, wealth, and education. An older person is invariably Respected by a younger person. The husband is more powerful than the wife in the family; and a man is afforded more status outside the family. Power is unequally distributed in Chakma society. The society is also hierarchically organized on the basis of religious knowledge and practice as follows: monks, novices, religiously devoted laymen, and commoners. Educated persons who are engaged in nonagricultural work are especially respected. Wealth also influences behavior in different aspects of social life.

Political Organization. The entire hill region of Southeastern Bangladesh (which is divided into the three political and administrative districts of Rangamati, Khagrachhari, and Bandarban) is also divided into three circles, each having its own indigenous name: Mong Circle, Chakma Circle, and Bohmong Circle. Each circle, with a multiethnic population, is headed by a raja or indigenous chief, who is responsible for the collection of revenue and for regulating the internal affairs of villages within his circle. The Chakma Circle is headed by a Chakma raja (the Mong and Bohmong circles by Marma rajas). Unlike the situation in the other two circles, Chakma Circle's chieftaincy is strictly hereditary.

Each circle is subdivided into numerous mouza or "revenue villages" (also known as gram, or "villages"), each under a headman. He is appointed by the district commissioner on the basis of the recommendation of the local circle chief. The post of headman is not in theory hereditary, but in practice usually it is. The headman has, among other things, to collect revenue and maintain peace and discipline within his mouza. Finally, each mouza comprises about five to ten para (also called *adam*). These are hamlets, each with its own karbari or hamlet chief. He is appointed by the circle chief, in consultation with the concerned headman. The post of karbari also is usually hereditary, but not necessarily so. Each hamlet comprises a number of clusters of households. The head of a household or family is usually a senior male member, the husband or father.

In addition to these traditional political arrangements (circle, village, and hamlet, each having a chief or head), the local government system (imposed by the central government) has been in operation since 1960. For the convenience of administration, Bangladesh is split into four divisions, each under a divisional commissioner. Each one is further subdivided into *zila*, or districts. The administrative head of a *zila* is called a deputy commissioner. Each *zila* consists of several *upazila* or subdistricts, headed by an elected *upazila* chairman (elected by the people). He is assisted by a government officer known as *upazila nirbahi*, the officer who is the chief executive there. Each *upazila* consists of several union *parishad* or councils. An elected Chairman heads a union

parishad. Several gram make up a union parishad. This administrative setup is also found in the districts of the hill Region. The Chakma and other ethnic minority hill people are increasingly accepting this local governmental system Because the government undertakes development projects through this structure.

Social Control. Traditionally the village headman would settle disputes. If contending parties were not satisfied with the arbitration, they might make an appeal to the Chakma raja, the circle chief. Traditionally he was the highest authority to settle all disputes. Today they can move to the government courts if they are not satisfied with the raja's judgments. Although Chakma were usually expected to get their disputes settled either by the headman or raja, they are now at liberty to go to these courts. In recent times, depending on the nature and seriousness of disputes, the Chakma are increasingly doing this rather than settling disputes locally.

Conflict. In the past, the Chakma fought against the British imperial government several times but failed. In recent times (since 1975), they have become aware of their rights. They do not like the influx of the nontribal population in the hill region, and they consider it an important cause of their growing economic hardships. Therefore, since 1975, some Chakma (and a few from other tribes) have fought to banish nontribal people from the hill region. The government is trying to negotiate with the Chakma and other tribal elites to settle this matter. It has already given some political, Economic, and administrative powers to elected representatives of the Chakma and other hill people. These representatives (who are mostly hill men) are trying to negotiate with the Chakma (and other) agitators on behalf of the government. Many development projects have also been undertaken by the government in the hill region, so that the economic condition of the Chakma and other ethnic peoples might improve gradually.

Religion and Expressive Culture

Religious Beliefs. The Chakma are Buddhists. There is a Buddhist temple (*kaang*) in almost every Chakma village. They give gifts to the temple and attend the different Buddhist festivals. The Chakma follow Theravada Buddhism, their official and formal religion. Buddhism dominates their life. Indeed, it is now a unifying

force in the southeastern hill region of Bangladesh, as Buddhism is the common religion of Chakma, Marma, Chak, and Tanchangya. These ethnic groups celebrate together at one annual Buddhist festival called Kathin Chibar Dan, in which they make yarn (from cotton), give it color, dry the yarn, weave cloth (for monks), and formally present this cloth (after sewing) to the monks in a function. The Chakma also believe in many spirit beings, including a few Hindu goddesses. Some of these are malevolent while others are benevolent. They try to propitiate malevolent spirits through the exorcists and spirit doctors (*baidyo*). They also believe in guardian spirits that protect them. The malevolent spirits are believed to cause diseases and destroy crops.

Religious Practitioners. Many Chakma go to the temples to listen to the sermons of the monks and novices. They also give food to the monks, novices, and the Buddha's altar. The monks read sermons and participate in life-cycle rituals, but they do not take part in village government affairs. In addition to the monks, exorcists and *baidyo* are believed to mediate between humans and the world of spirits through incantations, charms, possession, and sympathetic actions.

Arts. The Chakma are noted for two arts, music and weaving. The bamboo flute is popular among young men, and girls play on another kind of flute. Songs and epic poems are sung. Weaving is an essential accomplishment of women. They make complex tapestries on a back-strap loom called a *ben*. They do their own spinning and dyeing.

Ceremonies. Chakma observe both Buddhist and non-Buddhist ceremonies. They observe the days of birth, enlightenment, and death of the Buddha; they observe Kathin Chibar Dan and other Buddhist occasions. Villagers also unite to propitiate the malevolent spirits. Individual Chakma households may also arrange rituals to counteract illness and crop damage.

Medicine. Illness is attributed to fright, spirit possession, or an imbalance of elements in the body. Most Chakma will still call in a village *baidyo*.

Death and Afterlife. The dead body is burnt; kin and affines mourn for a week, and then they arrange *satdinna* to pray for peace

for the departed soul. The Buddhist monk leads the cremation and *satdinna*.

Chakma – An Ancient Tribe in a Modern World

The Chakma tribe, also known as Changmas, are considered to be the largest tribe occupying the Chittagong Hill Tracts region of Bangladesh, as well as in India, where they have been settled for many generations. They have their own unique historical traditions, culture, folklore and language of Eastern Indo-Aryan origin, with the vast majority of Chakmas being followers of the Hinayana sect of Theravada Buddhism. Traditionally ruled by a king, these days the position of Chakma king – currently Devasish Roy-is more of a symbolic nature.

In keeping with their ancient traditions, Chakma women wear an ankle-length cloth, known as a *phinon*, around their waists, while being covered above the waist with a wrapped cloth known as a *hadi*. Both these garments are colorfully hand woven with a variety of intricate designs. Although Chakmas distinguish themselves from surrounding groups by their language, the majority are bilingual, speaking Chakma and Bengali, with many being conversant in other regional languages of Bangladesh. The script of the Chakma language is seldom used, with Bengali script being used instead. Many members of the Chakma tribe are accomplished writers, poets and artists.

The first historical written reference to Chakma settlements in the Chittagong Hill Tracts dates right back to around 1550 AD. The Portuguese explorer and cartographer, Lavanha, indicated on the earliest surviving map of Bengal that a tribe known as Chakma was living in a settlement of the Karnafuli River. Conflicting theories abound as to the origin of the Chakmas, with the most popular and convincing theory linking Chakmas with central Myanmar (previously Burma) and Arakan, a state of Myanmar. It is believed that they were taken captive by the Arakan king after a conflict with the Chakma king. The Chakma tribe adapted to their new circumstances and settled down to cultivate the land.

Although the Chakmas are intensely protective of their ancient traditions and culture, in recent years they have found that the outside world has begun to encroach on their land as well as their

heritage. In an effort to preserve their way of life and to secure the right to participate in any governmental decision making processes that affect them, the Chakmas have been outspoken and active in the international arena, but only time will tell whether the Chakma tribe will succeed in holding on to the way of life which makes them unique.

The Agonies of the Chakmas of Mizoram

Presently, Mizoram is the second most literate state in India, next only to Kerala. In a way this is something to be taken proud of considering many other states' dismal records such as Bihar (47.53), Uttar Pradesh (57.36), Arunachal Pradesh (54.74), Jammu and Kashmir (54.46), Jharkhand (54.13), and even West Bengal (69.22).

Yet, something is rotten in the government of Mizoram's education policy. It seems that the minorities do not figure anywhere in the Education Ministry's priority list. The State Education Ministry in particular and the government of Mizoram in general have blatantly failed to take note of the 2001 Census of India's findings that the Chakmas are the most illiterate tribal community in the state with only 45.3 per cent literacy rate against the 95.6 per cent literacy rate of the Mizos.

If this huge gap is any indication of outright discrimination and deprivation, such discrimination and deprivation are more glaring when considered the fact that only 56.2 per cent male and 33.6 per cent female among the Chakmas are literate against 96.8 per cent male and 94.4 per cent female literacy among the Mizos.

Literacy is not the only area where the Chakmas are lagging behind. Over 99 percent of the Chakma population lives in the villages. They are traditionally cultivators of Jhum, which is also renown as shifting cultivation. Their economic condition is deteriorating day by day with the lack of job opportunities for the educated youths and diminishing returns from the Jhum cultivation which is done after cutting off forests. The Jhum cultivators do not find green, fertile forests anymore and their futures are empty. Outside the Chakma Autonomous District Council (CADC), which is the homeland for only half of the total Chakmas of the state, the only government job available for the educated Chakma youths

is the teaching post in schools in Chakma dominated villages. In a situation where even the schools are limited or absent in villages there is practically no employment opportunity. It is another notable fact that there is no State cadre gazette officer from the Chakma community. Aren't these symbols of discrimination?

The ongoing Mizoram-Bangladesh border fencing will displace thousands of border villagers who are mostly Chakmas. These people have already been embattled by poverty and the fencing is sure to break their backbones. The pangs of displacement from one's land can be felt only by the victims themselves while others can only sympathize with them. Although the government has provided some monetary relief to the displaced families, it is not yet clear whether the government will do enough to provide proper rehabilitation to them. It is important that the people who have sacrificed their lands for the interest of the nation should be respectfully resettled and given all kinds of facilities which they had enjoyed in their original villages. The government in fact is duty bound to do much more than that. But having known the bitter experiences of other IDPs elsewhere in India, the prospects of the Chakmas do not evoke much hope.

It is the hope of every person of Mizoram to take the state towards peace and progress in every sector. But this will never be possible so long as the State government treats the Chakmas, who are the second largest tribal community, as step children and do enough to bring them at par with other citizens. In other words, for the advancement of Mizoram it is equally important that agonies of the Chakmas be transformed into hopes and smiles.

Chakma-Hajong Refugees and their Rights

Introduction

The problem of Chakma and Hajong refugees are not very new in the state of Arunachal Pradesh. It is also true that the migration is a human phenomenon and it has to accept by all the human beings throughout the universe. The problem of refugee in this universe is one of the most painful activities which happened particularly after the Second World War. Nobody wants in this universe to recognize him or her as refugee or synonym to this. The Chakma and Hajong refugees' problem is one of the most critical but contemporary problem in the region which created lots of tension between the people who claim themselves indigenous and the Chakma and Hajong refugees of Arunachal Pradesh. Civil society is completely inactive in Arunachal Pradesh to provide the basic fundamental as well as human rights.

The paper particularly focuses on the various issues of the Chakma and Hajong refugees' problem as well as the working of the civil society in the state of Arunachal Pradesh. It also critically discusses the other provisions of the constitution which is directly or indirectly related to the Buddhist Chakma and Hajong refugees of the state.

During the last over three decades, the Chakmas and Hajongs refugee issue has been the matter of simmering discontent among the indigenous tribal people of Arunachal Pradesh. The casual decision of the then Governor of Assam on April 10, 1964 to settled these refugees in Arunachal Pradesh did not take into consideration

the legal protection of the indigenous tribal people and there tradition, culture, custom and identity.

The problem arising out of settlement of Chakma and Hajong refugees in Arunachal Pradesh during the period 1964-69 is as old as the settlement itself. The origin of the problem lies in the manner of settlement as it was done violating all the time-honoured norms, principles and legal provisions. Obviously, the Chakmas and Hajongs refugee issue has been agitating the minds of the indigenous tribal people, the Central Government, the State Government, Human Rights Organisations and Chakma and Hajong refugees themselves temporarily settled in Arunachal Pradesh for over many decades.

While in the opinion of the indigenous tribal people, their customary laws have been encroached upon by allowing settlement of Chakma and Hajong refugees by the Central Government much against their wishes, these refugees have been mounting pressure on the authorities concerned to grant them citizenship rights so that they can legalize their temporary stay on the plea that they have been staying over three to four decades in Arunachal Pradesh.

If the problem is viewed from the demographic perspective emerging on account of fast growth rate of Chakma and Hajong population and also due to influx of non-settler Chakmas and Hajongs from outside the state, it becomes abundantly clear that the ethnic population will soon be reduced to a minority. The indigenous tribal people of Arunachal Pradesh view the presence of Chakma and Hajong refugees on their soil as a serious threat to their own survival, their age-old customs and traditions and also to the peace and tranquility of the state, which Arunachalees believe. At stake, therefore, is the very existence of Arunachal Pradesh as an ethnic state in the Indian Union in its pristine glory. In order to appreciate objectively the problem, it is necessary to know the background of the state of Arunachal Pradesh, its history and the nature of the tribal population inhabiting the state.

An information and communication society should be based on human rights and human dignity. With the Charter of the United Nations and the Universal Declaration of Human Rights as its foundation, it must embody the universality, indivisibility, interrelation and interdependence of all human rights – civil,

political, economic, social and cultural including the right to development and linguistic rights. This implies the full integration, concrete application and enforcement of all rights and the recognition of their centrality to democracy and sustainable development.

Article 19 of the Universal Declaration of Human Rights is of fundamental and specific importance, since it forms an essential condition for human rights-based information and communication societies. Article 19 requires that everyone has the right to freedom of opinion and expression and the right to seek, receive and impart information and ideas, through any media and regardless of frontiers. This implies free circulation of ideas, pluralism of the sources of information and the media, press freedom, and availability of the tools to access information and share knowledge. Freedom of expression on the Internet must be protected by the rule of law rather than through self regulation and codes of conduct. There must be no prior censorship, arbitrary control of, or constraints on, participants in the communication process or on the content, transmission and dissemination of information. Pluralism of the sources of information and the media must be safeguarded and promoted.

Civil Society

Civil society, in the first part is about the institutional changes in the modern period, which established the democratic governmental and capitalist market. Secondly, concerned with non-governmental associations that directly do not deal with the commercial business and thirdly, it deals with the whole voluntary sector, excluding government, but includes both business and third sector (which comprises neither government nor market).

Civil society is a network of the citizens and the nongovernmental organizations. This network lies between citizens on the one hand and the state on the other. According to David Held, civil society is made up of areas of social life, the domestic world, economic sphere, cultural activities and political action which are organized by private or voluntary arrangements between individuals and groups outside the direct control of the state. Thomas, Hobbes, in "*Laviathan*" points that the civil society means,

consent of every one and allows every one's freedom to do whatever the law of the state prohibit. Tocqueville said that civil society is rather civilised social interaction between mob and the state. Lastly, G.W.F Hegel was the first who distinguished the state from civil society in every phase of life except the government. He describes it as a repository of public freedom; while state remain the final source of moral authority.

Arunachal Pradesh one of the largest refugees dominated state in India who settled forty years back (1964). The very fact is that the governmental administration as well the civil society is completely ineffective to provide the basic fundamental rights to the refugees and with that these refugees are continuously denied their rights and liberty by the state and civil societies. Now the very basic question is to be ask is, why the civil society is not working in the state when it comes to the Chakma and Hajong refugees, why right to information are not allowed to accesses by these refugees which is one of the fundamental rights or to be say human rights.

Historical understanding of the State

The recent history and the administration of Arunachal Pradesh can be said to date back to 1838 when the British extended their administration to the frontiers which now form Arunachal Pradesh. The administration to this area under that regime failed to meet the desired result due to absence of good communication. It was only in 1914 that the British Government thought of treating these areas as a separate frontier tract to be administered somewhat differently from the rest of Assam. Consequently, the Assam Frontier Tracts Regulation, 1880 was extended to the North East Frontier Tracts and the Tracts were declared as "Excluded Areas" of Assam. They were administered by the Governor of Assam through the political officer in his discretion.

When the Constitution of India came into force in 1950, another change was effected in the administrative set up. The Government of Assam was relieved of its responsibility of looking after administration of the "Excluded Areas". However, the discretionary power was vested in the Governor of Assam, who served as the agent of the President of the Republic of India. In 1954, all these

tracts formed into the North East Frontier Agency (NEFA). On the enactment of North Eastern Area (Reorganization) Act 1971, NEFA was made Union Territory of Arunachal Pradesh on 21st January 1972. On 20th February 1987, Arunachal Pradesh was made a full fledged state within the Indian Union.

Even after so many political and administrative developments which culminated in the formation of the present state of Arunachal Pradesh the laws, rules and regulations which were applicable during the British period continued to be in force even today. The state of Arunachal Pradesh consists exclusively of different tribes. Part X of the Constitution read with the Sixth Schedule to the Constitution governs the administration of the state of Arunachal Pradesh. The entire area of the state has been declared as Scheduled areas. It was the endeavors of the constitution of India and various other enactment to protect and maintain the exclusive culture, custom and traditions of the local tribal people and was consistent with their ethos and aspirations.

The ethnic tribes of Arunachal Pradesh have very similar culture, tradition and custom with very rare differences. They have been following their customs and traditions, evolved over ages from time immemorial. These customs, traditions which are integral part of their life and living in tough hilly terrain in challenging circumstances have given rise to a distinctive identity to the indigenous tribal people.

The efforts being made by the state Government in preserving the tribal identity and culture are however being jeopardized by the presence of the Chakma and Hajong refugees in the state. The people of Arunachal Pradesh distinguish themselves that there is nothing common between the tribal people of Arunachal Pradesh and the Chakma and Hajong refugees. The fact that both bear Mongoloid features further complicated the issue. Both belongs to the tribal groups one from the sate of Arunachal Pradesh and another from the Chittagong Hill Tract (CHT) respectively, no doubt there is religious differences. Chakmas are largely Buddhist than animism but, on the other hand the Arunachalees are largely animism, very few populations are Buddhist. With all these few differences, it can be generalized that the ethnic identity of both the groups never the last common in some areas.

Arunachal Pradesh or the erstwhile NEFA had sui generic, political status both during earlier British rule as well as in the post-independence era. From the very beginning when the British took possession of territory, the efforts were made to pre-British rule as well as in the post-independence era. From the very beginning when the British took possession of territory, the efforts were made to preserve the tribal society in its pristine form and protect it from any outside interference in its culture, values and socio-religious norms. By various laws, rules, regulations and orders, the government, ensure that the tribal society, its identity and its culture would be protected.

Arrival of the Chakma and Hajong Refugees

During the partition of India in 1947, the people of the Chittagong Hill Tracts (CHTs) under present-day Bangladesh, sought to be a part of India and even hoisted the Indian National Flag on their lands. However, the Bengal Boundary Commission headed by Redcliff awarded the CHTs to Pakistan although 98.5 percent of the population of the CHTs was non-Muslim. The then Pakistan Government took a serious view of the hoisting of the Indian flag by the Chakmas and embarked on a series of repressive measures. Unable to bear the atrocities and faced with displacement on account of the construction of the Kaptai Hydel Project about 30,000 Chakmas and Hajongs migrated to India in 1964. They were settled in Arunachal Pradesh after due consultation with the local leaders by the Central Government of India under a "Definite Plan of Rehabilitation". The Government of India extended all possible kind of helps including financial aids, employment, trade, license, book grants etc. for proper establishment of their shattered life. After the partition of India, the Government's policy was to grant citizenship to those who originated from areas that were part of Undivided India. The rest of the migrants were accorded Indian citizenship. However the Chakmas and Hajongs were not granted Indian citizenship. In the wake of the anti-foreigner agitation in Assam, the State Government of Arunachal Pradesh undertook a series of repressive measures beginning in 1980. The State Government vide its letter No. POL -21/80 dated 29th September 1980 banned public employment for the Chakmas and Hajongs in the State. In 1991, the State Government under its order No FPSO-

3/90-91 of 31 October 1991 issued by the Circle Officer of Diyun withdrew ration card facilities under the Public Distribution System. In 1994, the State Government under its order vide no. CS/HOME/94 dated 21 November 1994 further directed 'withdrawal of all kinds of facilities from the Chakma Settlement area'.

In 1991, the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) was formed to demand for citizenship rights of the Chakmas and Hajongs of Arunachal Pradesh. Starting in 1992, the State Government of Arunachal Pradesh became more hostile and started inciting sectarian violence against the Chakmas and Hajongs. The All Arunachal Pradesh Students Union (AAPSU) served a "Quit Arunachal Pradesh" notice to the Chakmas to leave the State by 30 September 1994. As a result, a large number of Chakmas fled from Arunachal Pradesh and took refuge in the neighboring Indian State of Assam. However, the State Government of Assam issued shoot at sight orders against the fleeing Chakmas and Hajongs. The CCRCAP approached the National Human Rights Commission of India (NHRC) about the deadline set by the AAPSU and the threat to the lives and property of the Chakmas and Hajongs. The NHRC treated it as a formal complaint and asked the State Government and Central Government to report on the issue. On 7 December 1994, the NHRC directed the State Government of Arunachal Pradesh and Central Government to provide information about the steps taken to protect the Chakmas and Hajongs. This was ignored till September 1995. In the meantime, the harassment, intimidation, arrests and detention continued and increased. The issue became critical following the meeting of all-party leaders and the AAPSU held at Naharlagan, Itanagar on 20 September 1995. Political leaders of Arunachal Pradesh led by then Chief Minister Mr. Gegong Apang passed a unanimous resolution to resign en masse from the national party membership if the Chakmas and Hajongs are not deported by 31 December 1995. The resolution also prohibited any social interactions between the local Arunachalees and the Chakmas and Hajongs. The CCRCAP approached the NHRC again on 12 and 28 October 1995 to seek protection of their lives and liberty in view of the deadline and

support extended to the AAPSU by the State Government. As the State Government was inordinately delaying the transmission of information regarding the steps taken to protect the Chakmas and Hajongs, the NHRC, headed by Justice Ranganath Mishra, approached the Supreme Court to seek appropriate relief and filed a writ petition (720/1995). The Supreme Court in its interim order on 2 November 1995 directed the State Government to "ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law." As the 31st December 1995 deadline approached, then Prime Minister P V Narashima Rao formed a high-level committee headed by then Home Minister S B Chavan. On 9 January 1996, the Supreme Court gave its judgement in the case of NHRC vs. State of Arunachal Pradesh, issuing the following orders:

- a) The first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas;
- b) Except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein;
- c) The quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law;
- d) The application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the Deputy Commissioner who receives them under the relevant rule,

with or without enquiry, as the case may be, to the Central Government for its consideration in accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the concerned persons and shall be processed and forwarded to the Central Government;

- e) While the application of any individual Chakma is pending consideration, the first respondent shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf;

Despite the clear and unambiguous order of the Supreme Court, the State Government of Arunachal Pradesh has not taken any measure to implement the court's directions. Rather, the State Government has undertaken various measures to undermine and violate the Supreme Court judgement. The State Government has been making the conditions of the Chakmas and Hajongs untenable by denying them fundamental rights such as right to education and other basic facilities such as health care, employment facilities. Other measures included a complete halt to any development activities, refusal to provide trade licenses, refusal to deploy teachers in the schools located in the Chakma and Hajong areas, withdrawal of all pre-primary (Anganwadi) centres and finally forcible eviction by claiming the lands of the Chakmas and Hajongs as forest lands.

After the Supreme Court judgment, the AAPSU and State Government of Arunachal Pradesh began inciting communal hatred. The State Government, however, became more tactful, calculated and deliberate in its anti-Chakma activities. With a view to repel any move to submit citizenship applications to the Deputy Commissioners, the State Government attempted to provoke communal passions by calling a state-wide bandh on 22 January 1996. The then Chief Minister, Mr. Gegong Apang, went to the extent of describing the Supreme Court judgment as the "step-motherly attitude of the Centre" and calling it biased judgment". On 26 January 1997 the AAPSU also called a state-wide bandh. On 4 May 1998, 27 Chakmas went to submit the citizenship applications to the Deputy Commissioner of Changlang District.

The citizenship applications were verified by the First Class Magistrate of Margarita, Assam. However, the Deputy Commissioner of Changlang refused to accept the applications. Due to the pervasive fear and the hostile situation engineered by the State Government, the Chakmas and Hajongs were unable to submit applications to the Deputy Commissioners. It was after discussions with the officials of Union Home Ministry that the Chakmas and Hajongs started submitting citizenship applications to the Deputy Commissioners through the Union Home Ministry in February 1997. Over the years, around 4000 citizenship applications have been submitted. However, the concerned Deputy Commissioners have been blocking the said applications by not verifying them and not forwarding them within a reasonable period of time in spite of an amendment in the Citizenship Rules, 1956. Under Rule 9 of the Citizenship Rules (Amended), 1998 the Deputy Commissioner/State Government is required to forward the citizenship application within a period of six months. The blocking of citizenship applications in this manner is a clear contempt of Supreme Court order in which the apex court clearly held that the Deputy Commissioners are bound to forward the applications received by them, with or without inquiry, as the case may be, to the Central Government for consideration. It has been learnt that the State Government has forwarded around 260 citizenship applications in January 2000 after due verification. However, until today the Union Home Ministry has not taken any decision on these applications despite the fact that all the applicants have provided documentary proof (such as identity cards issued by the State Government) that can stand judicial scrutiny to prove their migration in 1964 and continuous stay in Arunachal Pradesh. Justice delayed is justice denied. The refusal of the Central Government to grant citizenship to 260 applicants whose applications have been verified is further denial of justice.

On 28 January 1996, Mr. Pularam Chakma, of Udaipur village under Diyun Circle of Changlang district, and Mr. Maratsa Chakma, S/o-Mr. Ratna Kumar Chakma, aged 16, of Vijoypur village under Bardumsa circle of Changlang district went for harvesting the mustard crop. They were working for Mr. Chandra Kri and Mr. Pyola Kri of Namgo village under Chowkham circle of Lohit

district. Mr. Pularam Chakma and Mr. Maratsa Chakma were attacked by about 20 AAPSU activists and beaten up mercilessly at Medo Bazar of Lohit district in full public view. Mr. Pularam Chakma was beaten to death on the spot. Mr. Maratsa Chakma, who was left for dead, however later gained consciousness and was able to get assistance at a nearby Chakma house. CCRCAP had approached the NHRC on the issue.

The State Government of Arunachal Pradesh has adopted various policies to evict the Chakmas and Hajongs by issuing orders for eviction to show that its actions were being done legally without violating the Supreme Court judgement. On 8 December 1997, the State Government of Arunachal Pradesh issued eviction notices to 66 Chakma families in Kamakhyapur and Raj Nagar areas under Changlang district. Earlier, on 11 November 1997, the Circle Officer of Diyun, Mr. D Riba served quit notices (memo No Diyun/LR/EVC/97) to 109 families of Jyotsnapur village under Changlang district and directed them to proceed to their original settlement areas. Mr. Riba did not give any explanation for such eviction notice. In his notice, Mr. Riba simply stated, "You are hereby directed to proceed to your original settlement Jyotipur village with family latest by 20 November 1997 without fail. Failing which legal action will be initiated against you." The Chakmas have been living in Jyotsnapur village for the last two decades. They have settled in Jyotsnapur village after the Diyun River flooded their areas and destroyed their houses during monsoon. For the last two decades, the State Government did not raise any objection. In fact, it was the officials of the State Government who ordered the Chakmas to settle in Jyotsnapur village.

When three Chakma families re-built their huts, the Forest Officials visited the area on 21 January 1997 and demolished them again. The properties of all the damaged houses were seized by the Forest Corporation officials, transported in two trucks with the help of 40 labourers and auctioned at Miao market in Changlang District on 21 January 1997. On 2 February 1997, the Forest Corporation Ltd officials planted trees in that area. The plantation in the Chakma inhabited areas was carried by Shri B Ajang (Divisional Manager of Forest Corporation), Mr. K K Dev (Range Manager), Mr. A Dutta (Assistant Range Manager), Mr. D D Dubey,

Forest Guard, Mr. L Abou, Forest Guard, Mr. R H Lowang, Forest Guard and Mr. S K Dhar, Forest Guard. In addition, the State Government in other places evicted many Chakmas from other villages.

The Circle Officer of Diyun Mr. D Riba called a meeting with the local tribal leaders on 27 October 1997 at his office where it was unanimously decided not to "engage any Chakma/Hajong people for their agricultural field, contract work and business" by 30 October 1997. The Circle Officer issued a Circular Vide No DYN/CON-4/97 dated 27 October 1997. The Circle Officer also issued another notice on 31 October 1997 Vide No DYN/JUD-1/97, directing to "discontinue the engagement of Chakma/Hajong people in agricultural field/business and contract work forthwith".

In 1998 the State Government imposed an economic embargo on the Chakmas and Hajongs. Agricultural products such as ginger, chili and master seeds produced by the Chakmas and Hajongs have no market in the local areas. They have to be sold in neighboring Assam. However, to sell these cash crops in Assam require permission from the State Government. But, the Chakmas and Hajongs continue to be denied permission/licenses to sell their products in Assam. As a result, their products are damaged. The CCRCAP filed a PIL bearing No. Civil Rule 4/1998 before the Honorable Gauhati High Court and the same is still pending for adjudication. The State

Government taking advantage of the judicial delay until today is denying them permission to sell their products. While the Government of India has been taking measures to make the right to education a fundamental right, the State Government of Arunachal Pradesh has been taking all measures to completely deny the right to education to the Chakmas and Hajongs.

All the forty-nine pre-primary schools (Anganwadis), were withdrawn in 1994 (vide No. CS/HOME/94 dated 21 November 1994) during the State sponsored agitation to oust the Chakmas and Hajongs from Arunachal Pradesh. The Anganwadi Centres are yet to be restored. Consequently, the Chakmas and Hajongs have been facing a generation gap in education despite the Government of India making the right to education as a

fundamental right. The Anganwadi Centres had provided employment to 98 women. The withdrawal had resulted in their termination from job without any compensation.

For about 40,000 Chakma and Hajong population there is only one Government Secondary School at Diyun. In the absence of any middle school in the whole Diyun circle, this school has to accommodate all the Chakma and Hajong students passing out every year from more than 10 primary schools operating in the Chakma areas. Around 1,400 (12 teachers) are enrolled in this school with virtually no infrastructural facilities. The school building is built by the Chakmas and no grant is given by the State Government. No developmental works has been undertaken by the State Government-bench, desk, duster and other required furniture are self-arranged by the guardians of students.

The State Government of Arunachal Pradesh in a circular on 31 October 1991 (No FPSO-3/90-91) had ordered all the Chakmas and Hajongs to surrender their rations cards under the Public Distribution System to the Circle Officer. Thousands of Chakmas and Hajongs were forced to surrender their ration cards to the State Government. Despite the Supreme Court judgement the State Government has not returned the ration cards. The Chakmas and Hajongs are very poor and rely to a large extent on the Public Distribution System. Ration card facilities are indispensable for the daily labourers. By denying the ration card facilities, the State Government of Arunachal Pradesh has condemned them to poverty. As stated above, the Chakmas and Hajongs are not even issued permission to sell their cash crops in neighbouring Assam. They are not issued licenses for trade in the local markets. At the same time, hundreds of families were rendered landless due to soil erosion caused by the Noa-Dihing River and its tributaries. More than 80 percent of the Chakmas and Hajongs are below poverty line. Yet the Chief Secretary to the State Government of Arunachal Pradesh, Mr. P M Nair in a letter to Additional Secretary P D Shenoy, MHA vide letter no D.O.No.HMB(B)-74/96 of 9 March 2000 stated that "at present Chakmas are not covered under the Public Distribution System as they are self-sufficient in food grains". It must be mentioned that if the local people can be covered under the PDS despite having all the facilities at their disposal, the claim

of the State Government that the Chakmas and Hajongs are self-sufficient economically is far-fetched. In fact, the Chakmas and Hajongs are not covered under the PDS merely because they are not citizens, which is again contrary to the Supreme Court's directions.

Since 22 October 1997, the Circle Officer of Diyun Circle, Officer in Charge of Diyun Police Station and Second Officer of Diyun Police Station came to the shops of Chakmas in Diyun Bazar and verbally ordered the closing down of shops belonging to the following persons:

The State Government vide circular dated 29th September 1980 and circular dated 31st October 1997 has banned employment in government service, agricultural field, contract work and business etc. for the Chakmas and Hajongs in the state, resulting in the unemployment among a large number of educated youths. The ban on employment continues until today.

The entire Chakma-Hajong area consisting of 30 villages, there is only one Primary Health Centre (PHC) at Diyun circle, whereas, in other local areas PHC has been provided in almost all villages. The PHC of Diyun hardly able to cater the needs of Disseminated by Asian Indigenous & Tribal Peoples Network for public information Chakmas and Hajongs as it has only one doctor, five nurses and eight beds. The patients often remain unattended and therefore people prefer to give their own treatment gained by way of experience. Instances of malarial deaths and other simple and serious diseases otherwise not fatal are numerous. Though it is claimed that the Chakmas are provided medical facilities, in effect they are still denied treatment. Nurses also charge money to give injections. Some Chakma villages such as Dharmapur, circle Miao, Bijoypur, circle Bordumsa and Deban area (eight villages) in Changlang district are located far away from the nearest PHC. As there are rivers, which are sometimes flooded, people remain cut off sometime for a month from rest of the places. Therefore, even simple fever often proves fatal in these places.

The State Government has banned all development activities in the Chakma and Hajong areas. In an order vide no. CS/HOME/94 dated 21 November 1994 the state government of Arunachal Pradesh directed "withdrawal of all kinds of facilities from the

Chakma Settlement area". Some of the problems due to lack of any public development works are given below:

- The Chakma and Hajong farmers were provided improved seeds, fertilizers, pesticides, agricultural tools and implements at subsidized rates till 1991 and these facilities were stopped thereafter. On the other hand, the other locals are being provided with high yielding variety of seeds, technical know-how and agricultural training and other assistance including monetary aid.
- The Chakmas and Hajongs have not been provided with drinking water facilities. Some villagers have to travel a distance of more than one and half kilometer to fetch water for drinking as well as for other domestic uses. During rainy season the river water causes several diseases, as it becomes unfit for drinking.
- No construction of roads, bridges and culverts are undertaken in the Chakma and Hajong inhabited areas. In the absence of infrastructures like roads, bridges, other developmental activities are unimaginable.
- Almost 90 percent of the Chakma villages are not provided with electricity though economically and technically most viable. Even those few villages having connections, electricity supply has been cut off since 1994 due to the non replacement of worn out apparatus or because of willful negligence on the part of the concerned officials. Complaints/reminders to authorities for replacement of worn out apparatus all these years have gone unheeded.

On 23 August 1995, a petition was filed before the Rajya Sabha Committee on Petition. After extensive visits to several places where the views of the local people, the Chakmas, experts, the State Government and the Central Government were taken into account, the Committee in its 105th Report of 14 August 1997 recommended the speedy granting of Indian citizenship to the Chakmas of Arunachal Pradesh. It was also recommended that "all the old applications of Chakmas for citizenship which have been either been rejected or withheld by Deputy Commissioners or the State Government continue to block the forwarding of such applications to Central Government, the Central Government may

consider to incorporate necessary provision in the Rules (or the Act if so required) whereby it could directly receive, consider and decide the application for citizenship in the case of Chakmas of Arunachal Pradesh." The Committee further recommended that the Chakmas be also considered for granting them the status of Scheduled Tribe at the time of granting the citizenship. Although, the Government of India has submitted Action Taken Report, practically none of the recommendations of the Rajya Sabha Committee on Petitions have been implemented until today.

After the Arunachal Pradesh government threatened that all members of State Assembly would resign en masse if the Chakmas and Hajongs were not expelled by 31 December 1995, a committee headed by the Prime Minister of India was established. A Sub-Committee under the chairmanship of the Union Home Minister was formed to find an amicable solution to the Chakma problem. The Home Ministry officials headed by Mr. P. D. Shenoy, Additional Secretary (Ministry of Home Affairs) representing the said Sub-Committee visited the Chakma and Hajong inhabited areas on 6 and 7 March 1999. The Sub-Committee in January 2000 submitted the report to the Union Home Minister, who is currently the chairman, containing specific recommendations to resolve the Chakma and Hajong problem. Unfortunately, no decision has been taken for implementation of the recommendations of the Home Ministry team.

In addition to the Chakmas and Hajongs who migrated in 1964, there are about 5,000 Chakmas and Hajongs who are born after the migration of their parents in 1964. They are Indian citizens by birth under Section 3(1) (a) of the Indian Citizenship Act, 1955 which states that "except as provided in sub-section (2), every person born in India, -(a) on or after the 26th day of January, 1950 but before the commencement of the Citizenship (Amendment) Act, 1986" is a citizen by birth. The CCRCAP filed a complaint with the National Human Right Commission on 12 December 1997 against the denial of franchise rights to the Chakmas and Hajongs. The NHRC issued notice to the State Government of Arunachal Pradesh and the Union Government of India on the issue. In their replies to the NHRC, both the Central Government and the State Government of Arunachal Pradesh recognised that

"as per the provisions of the Citizenship Act 1955, every person born in India on or after 26 January 1950 and before 1 July 1987 are citizens of India by birth and therefore eligible for electoral rolls." However, when the Chakmas and Hajongs who were born after their parents' migration and are citizens under Section 3(1)(a) of Indian Citizenship Act, 1955, went to the Assistant Electoral Registration Officer of Diyun under Changlang District of Arunachal Pradesh, the officer refused to accept their Form 6 – Application for inclusion of name in electoral rolls. The CCRCAP approached the Ministry of Home Affairs (MHA). The MHA informed it that the Election Commission had been requested to include all the Indian citizens into the electoral rolls. But the Election Commission took no action. Since no action has been taken to ensure that the Chakmas and Hajongs are enrolled in the voters' list, the PUCL and the CCRCAP filed a writ petition (CPR no. 886 of 2000) before the Delhi High Court. In its judgement on 28 September 2000, the Delhi High Court ordered the registration of all eligible voters. This order, too, was flouted on various pretexts. Till date, not a single Chakma or Hajong has been included in the electoral rolls. During the revision of electoral roll 2001 around 2000 Chakmas and Hajongs filed claim applications enclosed therewith their proof of age, residence etc. All the claim applications were, however, rejected for not specifying house enumeration number and due to lack of polling station in the Chakma areas. It may be stated that the allotment of house enumeration number and setting up of polling station are tasks of EC and the Chakma and Hajong applicants cannot be punished for omission on the part of the officials of the EC. The repeated representations to the EC failed to elicit any positive result.

It is true that the tribal areas of this country have special status, and all these rights are given by the supreme book of the land called "Constitution of India". It is the only Constitution of India and Parliament of India who recognizes all the rights, identity and status of the tribes and their regions. But one also has to understand that the same Constitution also discuss about Article 21 (Right to life) and other fundamental rights, as well as the provisions of the Citizenship rights which is directly or indirectly related to the Chakma and Hajong refugees of this country. No

doubt we should respect the tribal identity, culture and etc., for their proper development to bring them to 'mainland' but with that, on humanitarian ground other groups who are also tribal before refugees in the Chittagong Hill Tract (Bangladesh) (Chakmas and Hajongs) should be respected largely. Once selfish nature adopted and feeling of regionalism developed, the system automatically changed without any gain.

People of Arunachal Pradesh has to understand that the legal part of the Constitution which providing rights to the Chakma and Hajong refugees to settle and get the status of Schedule Tribes in the state, and also Indira-Mujib agreement of 1972 allow legally to settle in the land of India with all the fundamental rights and other rights which Indian availing.

One also has to look all the provisions of the Constitution and Acts, and it is really, one of the most important areas to be focus. But discussing only the provisions of Inner Line Regulation Act, Special Status State, Bengal Regulation Act of 1873, and etc. is I think, baseless and biased, because all these are not the free mind provisions. All these provisions adopted by the British India when India was their colony and it has to be changed. We cannot continue the British made Colonial rule and regulation, policies and Acts to tackle different types of situations even after 57 to 58 years of independence, we are following the cynical policies, i.e., the policy of inner-line regulation, which I found one of the most inhuman policy towards the Indians, and if it continues I don't think it allow the tribal to mix with the mainland India and remove the tag of backwardness.

Whatever the case may be the Chakmas and Hajongs are those people who participated in India's war of independence, whose forefathers lost their life to make India independent. Chakmas and Hajongs have right to get their share in a proper legal manner. The issues of Chakmas and Hajongs in Arunachal Pradesh are completely political because all the parties fueling the issue only for political gain. Apart from all this oppose and politics of deport, of Chakmas and Hajongs in the state, it has come to light that few tribes of Arunachal like Singpho and Tangsa are supporting citizenship rights of the Chakma and Hajong refugees in the state, because they know that the Chakma and Hajong refugees are

legally correct and they should be given citizenship within a time bound period.

Chakmas and Hajongs came to India before forty years and have been fighting for their basic fundamental rights. Human rights are the basic fundamental rights to all the people who are residing in India. It is one of the most legal which is directly or indirectly related to the rights and liberties of the Chakmas and Hajongs. Working of civil society and governance is very poor or to be said that there is one of the worse functioning of the civil society in Arunachal Pradesh because the governmental administration as well as non governmental organizations are not functioning even to the minimum level to provide the basic fundamental rights i.e., right to life. The very simple example is the problem of Chakma and Hajong refugees in the state who are fighting to survive and waiting for the grant of citizenship and scheduled tribe status from years old.

Finally, without fueling and heating the issue more, it is very genuine to ask the question to all the political parties and NGO's that, why till today the Chakma and Hajong refugees problem is not being settled down?, what is the reason, even after the Supreme Court, Delhi High Court, Guwahati High Court Judgment, and Rajya Sabha Committees suggestion as well as the National Human Rights Commissions directions to grant citizenship rights and fundamental rights to all the Chakma and Hajong refugees of Arunachal Pradesh, not been forwarded as such? Why civil society is not functioning in the state when it comes to the issue of Chakmas and Hajongs. Apart from it many question is to be discussed and asked which is very complicated but valid.

Lastly, we can conclude by saying that all the solution is to be sort out under the paradigm of the Indian Constitution. There should be a democratic solution to the problem which satisfies the people of Arunachal Pradesh and which also at the same time takes into full consideration, the humanitarian requirements of the innocent Buddhist Chakma and Hajong refugees in the state of Arunachal Pradesh.

Chakma and Hajong Refugees

Migration is almost as characteristic of homo-sapiens as tool

making and culture building. Man is the most widely distributed social animal on the earth's surface. From their probable origin in Africa, human groups had spread out to occupy all the major land areas of the earth excepting Antarctica about 20,000 years earlier, long before the beginning of agriculture or written history. Thus migration is a geographical phenomenon that seems to be a human necessity in every age. Since man has a tendency to leave the areas in which life is difficult, he migrates to those areas where life may be easy and better.

One of the important causes of migration, especially after the Second World War, is the political situation. Political refugees are a world wide phenomenon today. One can list numerous examples of political migration. These include, Turkish, Armenians and White Russians early in the twentieth century; European Jews after the Second World War; Palestinians, Chinese, Hungarian Freedom fighters, Cubans, Indians, Pakistanis, Bangladeshis, Kashmiris, Tamils, Vietnamese, Afghans, Iranians, Somalians, Kurds, Serbians, Bosnians, Kosovians and Albanians.

All these are the examples of forced migrations induced by political factors. On 20 February 1987 statehood was conferred on Arunachal Pradesh under the 55 Constitutional Amendment Act of 1986, making it the 25 state of the Union of India. In fact the evolution and formation of Arunachal Pradesh is a tribute to the farsighted tribal policy formulated by Verrier Elwin. Arunachal Pradesh, area wise, is the largest state in the North Eastern Region of India (NERI), with an area of 83,743 sq. km, but with a population not more than eleven lakhs.

It forms a complex hill system of Shivalik and Himalayan origin and is criss-crossed by numerous rivers and streams. The state shares a total of 1630 km's of international boundary with neighbouring countries; 1030 km with China, 160 km with Bhutan and 440 km with Myanmar. The Mc Mohan Line defines the international boundary between India and China. Administratively, the state is divided into sixteen districts. Itanagar in Papumpare district, the state's capital, is named after Ita Fort, meaning Fort of Bricks. Hindu influences penetrated along the Brahmaputra up to the Dibang Valley. Sacred centers sprang up between the 11 and 13 centuries.

The ruins of the Bhishmak site have reportedly been located in the Dibang Valley and those of Parsuram Kund in Lohit District. According to the 2001 census the total population of Arunachal Pradesh is about 1,091,117 of which 573,951 are males and 517,166 female. The sex ratio is 901 females per thousand males. The total Scheduled Tribe population of the state is about 705,156 out of which 353,141 are males and 352,017 are females. The remainder are the nontribal populations. Arunachal Pradesh has 6,188 Scheduled Castes, out of which 3590 are males and 2598 females.

The literacy figures for the state is 487,796 out of which 302,371 are males and 185,425 are females. Percentage wise the literacy rate is about 54.74% out of which 64.07% are males and 44.24% are females. At present the state is divided into 16 districts for effective administration and development. The Chakma-Hajong problem started since the time NEFA was bifurcated and Arunachal Pradesh became a union territory. For a variety of reasons the locals became hostile towards the Chakmas. By the late seventies the situation started worsening and the facilities provided to the Chakma settlers were withdrawn slowly. In 1976 the real problem for them arose when all of a sudden Chakma-Hajongs who were enjoying free education, stipend, scholarship and free books were deprived of these facilities. To their great dismay, admission of Chakma-Hajongs in different schools were blatantly denied. Their seats were instead allotted to the native tribals.

In the late seventies and early eighties when the foreigners issue was at its peak in Assam, AAPSU chose to be vocal on this matter. In this sense the anti-foreigner agitation in Arunachal Pradesh is nothing but a spill over from Assam. The Chakma-Hajongs became the easiest prey for this drive as there were no Bengali Muslims in Arunachal Pradesh to be thrown out of the state. The Chakmas and Hajongs are simple, innocent and peace loving Buddhists, having their own language, culture and script.

In undivided India they had mainly inhabited the regions of the Chittagong Hill Tracts (CHT) of erstwhile Bengal (now in Bangladesh). Chakmas were the majority community of the CHT but during the partition of India in 1947, CHT became part of East Pakistan. As CHT comprised 98% Buddhists, the Chakmas wanted to merge with India during partition and they should have been

allowed to, as India was divided on religious grounds. They even hoisted the Indian flag, sent delegations to Delhi. However, they were compelled to be a part of East Pakistan against their will. To add to this injustice, they were not given an opportunity of a referendum to decide on the country where they would like to live. After a long freedom struggle, India got independence on August 15, 1947 and the tricolour was hoisted across the length and breadth of the nation.

Chakmas of CHT also did the same thing with the belief that they are now free from colonial rule without knowing that India had been partitioned and that they belonged to a different world (*i.e.* Pakistan). With independence gained, The Pakistan Government immediately sent its Army to check these innocent tribals, because they thought that the Chakmas were anti-nationalist and that they are going to create problems in the future so it was necessary to nip the problem in the bud and ensure proper control. In the course of time the Pakistan Government forced these people to accept Pakistani identity, and adhere to its rules and regulations. Pakistan captured CHT in a very authoritarian manner, and started torturing the tribal population. They burnt their houses, and started different types of projects for government control of the area some of which were, particularly large like the Kaptai Hydel Power Project which displaced lakhs of Chakmas from their indigenous land. More than 40% of the cultivated land was submerged in water and the remaining hilly areas were no safer because of the construction of the dam. People of the CHT started demanding compensation but instead of giving compensation these tribals were forced to leave their lands. Because of the loss of their cultivable land, and loss of other natural resources, the Chakma economy deteriorated considerably leading to severe poverty.

To protect their culture and even their lives from the Pakistani autocracy as well as to fulfill the basic demand of their stomachs, they found in India a suitable parental place to migrate and they started migrating to the North Eastern States. In March 1972, India and Bangladesh signed a 25 years treaty of friendship, cooperation and peace (the Indira-Mujib agreement). At a time when USA, China, Pakistan and a number of other countries had withheld their recognition of Bangladesh, Indo-Soviet support was both

politically and economically significant. Moreover, the dauntlessness displayed by India in winning independence for Bangladesh had already created a favourable atmosphere for a warm beginning of their relations. India had been the host of approximately ten million refugees and faced all the attendant problems they carried with them. After the birth of Bangladesh, refugees started retreating with India helping Bangladesh extensively in her refugee rehabilitation and economic reconstruction programme.

India supplied Rs.185.8 million for refugee rehabilitation. Besides, giving medicines, drugs, food, clothing, transport and building materials, India granted Rs.250 million to Bangladesh for purchase of essential commodities including food, sugar, salt, baby food, oil, petroleum products, cement, steel products, power generation equipment and vehicles. A credit of Rs.100 million was also provided for reconstruction of its railway network. In addition a foreign exchange loan worth 5 million pounds was also given to Bangladesh to meet her urgent requirements of foreign exchange. Besides all these, the Government of India opined that all the immigrants could not be termed illegal infiltrators because prior to and after partition, minorities were assured that they would be given complete protection in India if they were forced to leave Pakistan due to internal disturbances. Moreover, the government was firm on not agreeing to 1951 as the base year for it would lead to legal and international complications.

It would also have denied the Nehru-Liaquat Ali Pact of 1950 and the Indira-Mujib understanding of 1972. Under the Citizenship Act 1955 provisions exist for a person born out of India on or after January 26, 1950 to retain the right to become an Indian citizen by descent, if his father was a citizen of India at the time of his birth. Acceptance of 1951 would have perforce flushed out approximately four million people who had entered India after 1951 and were given recognition by the 1972 understanding.

The Chakmas and Hajongs of India have been residing in Arunachal Pradesh for more than forty two years. On 15th June 1971, Mrs. Indira Gandhi declared in the Rajya Sabha that: "as suggested, have to go through hell to meet the challenge passed by the developments in Bangladesh". From then onwards India

started providing help for securing their rights, which involved the liberation of Bangladesh. Under the Indira-Mujib Agreement of 1972, it was determined that India and not Bangladesh would be responsible for the migrants who entered India before 25 March 1971.

Furthermore, the Central Government has often asserted that the Chakmas and Hajongs have a legitimate claim to Indian citizenship. In a letter, the Minister for Home and Parliamentary Affairs M.M.Jacob said: "being 'New Migrants', viz., refugees from Bangladesh who came to India between 1964 and 1971 respectively, are eligible to the grant of citizenship just as to the policy of the Government on the subject and most of these migrants have already been granted citizenship". Again in 1994, Minister of State P.M. Sayeed stated: "under the Indira-Mujib agreement of 1972, it was decided that the Chakma and Hajong refugees who came to India from the erstwhile East Pakistan (now Bangladesh) before 25.3.1971 will be considered for grant of Indian Citizenship".

Further, a very large proportion of these refugees would have been born in India and therefore, would be automatically entitled to the grant of citizenship. It may be mentioned here that the Arunachal Pradesh government has been demanding deportation of all refugees including Chakmas and Hajongs temporarily settled in the State by the Centre. Several resolutions to this effect had also been passed in the Assembly. The All Arunachal Pradesh Students Union (AAPSU) has been spearheading the movement demanding deportation of all refugees from the state in a very volatile manner.

The position which has to focus on the provisions of the Constitution on citizenship follows like this:

- Article-5(1) Suggest that those who migrated to India before the commencement of the Constitution (1950) are liable to get citizenship rights.
- Article-5(a) A person born as well as domiciled in the territory of India-irrespective of the nationality of his parents.
- Article-5(b) A person domiciled in the territory of India, either of whose parents was born in the territory of India-

irrespective of the nationality of his parents or the place of birth of such person.

- Article-5(c) A person who or whose father or mother is not born in India.
- Article-6 Migrants from Pakistan: Provides for citizenship rights of migrants from Pakistan before the commencement of the constitution.
- Article-7 Makes special provisions regarding the citizenship rights of persons who migrated to Pakistan after March, 1, 1947 but returned to India subsequently.
- Article-8 Provides that any person who or either whose parents or grand parents was born in India as defined in the Government of India Act 1955 and who is ordinarily residing in any country outside India shall be deemed to be a citizen of India if he has been registered as an Indian citizen by diplomatic or consular representative of India in that country on an application made by him in the prescribed form to such diplomatic or consular representative, whether before or after the commencement of the constitution (26 January, 1950, Act of 1955).

Indira-Mujib Agreement: Bangladeshis who migrated to India before 1971 and got refugee status are liable to get citizenship rights just as to the agreement.

Give the Chakmas and Hajongs who were born between 1964 and 1 July, 1986 and are citizens by birth under the Citizenship Act 1955, their rights. They Citizenship Act of 1955 is absolutely clear that those who are born prior to 1 July 1986 are eligible for citizenship unless “

- His father possesses such immunity from suits or legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or
- His father is an enemy alien and the birth occurs in a place then under occupation of the enemy” of the Citizenship Act, 1955.

Today Chakmas and Hajongs are settled in many parts of eastern and northeastern states. According to the 2001 census

report on Scheduled Caste/Scheduled Tribes in the states which have these populations, their status are as below:

Chakma and Hajong Status:

Arunachal Pradesh	Refugee
Mizoram	Scheduled Tribes/Indian Citizens
Tripura	Scheduled Tribes/Indian Citizens
Meghalaya	Scheduled Tribes/Indian Citizens
Assam	Scheduled Tribes/Indian Citizens
West Bengal	Scheduled Tribes/Indian Citizens

My concern here in this document is that, Chakmas who migrated at the same time as their brethren who settled in Arunachal Pradesh, but settled in various parts of North-East India got citizenship rights as well as Scheduled Tribes status in Assam, Meghalaya, Mizoram, Tripura and West Bengal (Eastern States). But these same migrants, who settled in Arunachal Pradesh largely got the status of "Refugee". Though they settled in Arunachal Pradesh in 1964, migrated at the time of India-Pakistan partition. The Chakmas and Hajongs are thus fighting for the last forty years to get their basic fundamental rights.

The basic point being made here is that, there can be no dual policies in any country to deal with the same type of migrants/immigrants. All the legal provisions in the Constitution of India which is the supreme law of the land and the laws made by the Parliament of India are in favour of the Chakmas and Hajongs who migrated before 1950 and 1971 respectively.

All of them should thus be given citizenship as well as Scheduled Tribes status in Arunachal Pradesh, because they fulfill all the requirements of citizenship to avail the fundamental rights in the state in particular and India in general. If we compare with the Chakmas of the other states of the northeast, Arunachal Pradesh has the largest population which is dominant in three districts (Lohit, Tirap and Changlang). The Chakmas are the third largest ethnic group in Arunachal Pradesh.

If this is the case why is there a delay in providing justice to these innocent Buddhist Chakmas and Hajongs who have been fighting for their rights for the last forty two years? Why is the

Parliament of India silent in these issues, even after the High Court Delhi, Supreme Court of India (in the Supreme Court of India original civil jurisdiction writ petition (civil) no. 720 of 1995 National Human Rights Commission... Petitioner Versus State of Arunachal Pradesh have passed judgements relating to the issue of the Chakmas and Hajongs. Justice delayed is justice denied. Every Chakma and Hajong of the state has equal constitutional rights to get representation in the affairs of the state and nobody can be denied justice and their rights. Chakmas and Hajongs of Arunachal Pradesh have equal rights to get citizenship and Scheduled Tribe status, like the Chakmas of the eastern and north eastern states.

All the provisions of the constitution on citizenship are in favour of the Chakmas and Hajongs in the state. As this is the case, then why do they still need to fight for their rights. In Arunachal Pradesh human rights violation is very common, and at its peak. For example Chakma and Hajong children have no right to get admission in schools, they are not allowed to get government jobs, not allowed to use the public distribution system, their trading licenses have been canceled, markets are not allowed to sell their goods, medical facilities completely stopped. Electricity, drinking water, roads etc. are not even there in name.

In 2002, the State Government of Arunachal Pradesh granted citizenship to ninety Tibetan refugee families of Shyo village living in Tawang district of Arunachal Pradesh bordering China. The Tibetans had fled to Arunachal Pradesh in 1950s and 1960s. But in the case of Chakmas and Hajongs the State government cites the East Bengal Regulation Act of 1873 for their forcible deportation. The 1873 Act requires taking of prior permission (Inner Line Permit) before entering into Arunachal Pradesh.

However, the Chakmas and Hajongs who fled from then East Bengal (now Bangladesh) did not go to Arunachal Pradesh on their own. They were taken to the North East Frontier Agency (NEFA, present Arunachal Pradesh) by the Central Government with a view to permanently settle them there. The question is that if the Tibetans who fled to Arunachal Pradesh on their own can be given India Citizenship, why can't the same be provided for the Chakmas and Hajongs, who had migrated from undivided

India. The Chakmas and Hajongs had been settled in the State by the Central Government and thus, they also have same right to get all the facilities available to other citizens without any type of discrimination: social, economical, political or legal. In Arunachal Pradesh it is a clear case of discrimination for political gains of a few AAPSU and Core Committee leaders. Undoubtedly, the Chakmas and Hajongs deserve the same rights as the Tibetans. The Supreme Court has recognized the citizenship rights of the Chakmas and Hajongs who had migrated over a period of time.

The State Government of Arunachal Pradesh and Central Government in the affidavit to the Delhi High Court have recognized that the Chakmas and Hajongs are indigenous like the rest of the people of Arunachal Pradesh. They share more commonalities with their immediate neighbours including belief in Buddhism, than any other community elsewhere in the state. The logic is that one cannot use different laws for the same kind of migrants. The Constitutional Law on Citizenship, Rights to Life etc. are equal to all and one cannot wear two different glasses to solve the problem.

The innocent Chakmas should be given political as well as social rights without delay. Because Chakmas are the people from CHT who participated in the India's struggle for independence and lost their families, they should be given their share of independence in a democratic country like India which believes in social justice and equality. These are the people who suffered most after partition. The Chakma and Hajong movement should be recognized on humanitarian grounds so as to protect these victims and their future generations by giving them their basic fundamental rights without delay.

The Chakma-Hajong Refugee Crisis

The Arunachalese are getting increasingly worried about the future of their tribal identities, in view of the threat posed by the Chakma-Hajong refugees. They have been demanding their deportation, alleging they were dumped by the Government of India as a temporary measure, but much against their wishes. In doing this, political parties have joined the chorus to highlight the State's four-decades old vexed refugee's issue, mostly to score

political points especially in the times of elections. Lately, even the militant outfits have joined the bandwagon against the refugees. The militant National Liberation Front of Arunachal (NLFA) has also renewed its threat to drive out the Chakma-Hajong settlers from the State.

Way back in the 1960s, following the alleged atrocities committed on them by the majority Muslims and construction of the Kaptai hydro-electric dam in the Chittagong Hill Tracts of Bangladesh, several thousand Chakmas were displaced. A large number of them sought refuge in India. Subsequently, in 1964, the Government of India temporarily resettled some 35,000 Chakmas in the former North Eastern Frontier Agency (NEFA), in the areas that comprise the present day Lohit, Changlang and Papumpare districts of the State.

When NEFA was upgraded into the full-fledged State of Arunachal Pradesh in 1987, the issue gathered momentum. Since then, successive governments in the State have been pressing for their deportation. Leading the campaign, the vocal student body, All Arunachal Pradesh Students' Union (APSU) had even issued a 'Quit Arunachal Pradesh' notice to the Chakma-Hajong settlers. These efforts are yet to produce any result. However, the Chakma-Hajong communities have intensified their struggle for citizenship rights since the early 1990s and accused the State Government of human rights violations. Due to their constant pressure tactics a total of 1,497 of them were enrolled in the State's voter lists in January 2004 in a significant move with far reaching implications.

A presence of Chakma-Hajong communities in the State is perceived as a potential threat to their indigenous tribal culture and traditions by the host tribal communities. Their apprehension is that the 65,000 strong Chakma-Hajong refugees could in future emerge as a dominant political force. Such an eventuality would seal any prospects of their deportation. They are also increasingly worried about the alleged gradual transfer of their land to the refugees. Besides, the refugees are also accused of encroaching on the reserved forest land.

Taking strong exception to the killing of a zila parishad member of Diyun in Changlang district allegedly by Chakma refugees on 30 November 2004, the militant NLFA served notice on the Chakma-

Hajong communities to leave the State within two months. Condemning this incident, NLFA's self-styled publicity secretary, B. Dollung said that the raising criminal activities of the refugees were beyond tolerance limits in a faxed message to the local media on 10 December 2004. The militant group also warned that it was time for the refugees to vacate 'Arunachal soil' at the earliest. The outfit had also protested against their enrollment in the State electoral rolls.

Above all, there are alarming reports of nexus between the Chakma refugees and the underground extremists operating in Tripura, which is a cause for serious concern. As time passes the issue is becoming more complicated. It must be borne in mind that India's powerful neighbour, China, is not far from Arunachal Pradesh. In such a situation, serious efforts need to be made by the central and the state government to resolve the impasse, so as to prevent Arunachal becoming another Tripura. Half-baked solutions are bound to create more security challenges in future. The issue needs urgent attention as the region is prone to violent insurgencies.

Livelihood Crisis for Chakma, Hajong Refugees

14 September 2008 - Nearly 18 years back when Montosh Chakma of Jyotipur village of Diyun Circle in Changlang district of Arunachal Pradesh undertook a long journey to Guwahati to pursue higher education in Cotton College, he had a dream of dedicating himself to the service of his downtrodden community. He planned to sign up for a government job after graduating from the most reputed institution in the Northeast and then returning to his birthplace. He successfully completed his studies but his dream of a job remained unfulfilled. He was denied a government job by Arunachal Pradesh government on the grounds that he belonged to a refugee family and hence was not entitled to a government job.

Montosh had no other option but to become a farmer to earn his bread. His tale is no different from the stories of thousands of youth belonging to Chakma and Hajong refugee families of Arunachal Pradesh. The life of a farmer in the refugee settlement pockets is definitely not comfortable. Montosh uses a mere two

and half acres of land (after partition of parental land between his father and uncle) for agriculture, and this hardly fetches him enough money to run his four-member family — two brothers who are younger than him and ailing parents. But there is no other way. "Even if I try to go for multi-cropping agriculture system for surplus production, there is the problem of selling these products outside the refugee pockets," he says. The twice-a-week Diyun (Sunday and Wednesday) market is the only place where they can sell their surplus products, mostly vegetables, to their community people. Both buyers and sellers comprise of poverty-stricken refugee families, and thus there is no scope of doing a good business, he adds. To earn just Rs.50 on the market day, some people walk up to 10 kilometres.

Montosh himself is the Assistant General Secretary of the Committee for Citizenship Rights of Chakmas of Arunachal Pradesh (CCRCAP), the apex organisation that has been fighting for grant of citizenship to Chakma and Hajong refugees. He says agriculture is becoming less remunerative due to population pressure in these refugee pockets. This fact coupled with the absence of livelihood options has compelled a large number of educated boys and girls to migrate to cities such as Ahmedabad, Delhi and Kolkata to get employed at petty jobs such as salesmen in shops, in textile-mills, private security personal and other hazardous professions. Those who cannot afford to go outside mostly work in the agriculture fields of neighbouring Singpho and Tangsa Naga tribes on a share-crop system.

Most of these refugee pockets were allotted land on riverbank areas of the river Noa-Dihing and of late there is severe erosion problem in some villages. While there is acute livelihood crisis and joblessness everywhere, denial of family ration cards to avail facilities under Public Distribution System have pushed them into penury.

Mantosh's parents came to India way back in 1964, along with groups of fellow refugees from the Chitagang Hills Tract of erstwhile East Pakistan (now Bangladesh) after being displaced due to submergence of their habitat during construction of Kaptai Dam. India accommodated a huge number of such refugees belonging to Chakma and Hajong communities in different states.

As part of the refugee settlement programme, altogether 14,888 persons belonging to 2,748 families of both the communities were rehabilitated in Lohit, Subansiri (now in Papum Pare) and Tirap (now in Changlang) districts of the then North East Frontier Agency (NEFA), which was administered by the Ministry of External Affairs with the Governor of Assam acting as the agent of the President of India.

At the time of settlement, each of these families was allotted five acres of land for livelihood. The settlement process was completed between 1964 and 1969. Mantosh belongs to the second generation of these refugees born on Arunachal Pradesh's soil in 1968. NEFA was made a Union Territory in 1971, and finally a full-fledged state of Arunachal Pradesh in 1987.

Sustained Opposition to the Settlement

The issue of settlement of refugees who had entered India from erstwhile East Pakistan during and post partition period was addressed through Indira-Mujib pact of 1972. According to the provisions of the pact, those refugees who had entered India before 25 March 1971 are to be treated as Indian citizens.

However, the issue of providing citizenship rights to around 60,000 Chakma and Hajong refugees currently living in Arunachal Pradesh is yet to be decided due to constant opposition of the successive state governments as well as various organisations including the most powerful All Arunachal Pradesh Students Union (AAPSU). The Chakma and Hajong refugee issue is still a matter of endless conflict between locals and refugees at ground, as well as a matter of serious concern at administrative level. Successive state governments and political parties irrespective of their political affiliations have been demanding deportation of these refugees from the state. The refugees were also served 'Quit Arunachal Pradesh' notices by the AAPSU in 1994, which spearheaded a massive statewide agitation programme on the issue.

The National Human Rights Commission had moved the Supreme Court in 1996 pleading for protection of lives and properties of the Chakma and Hajong refugees in view of the AAPSU movement. The Supreme Court in its judgment on 9 January 1996 on this petition directed the Arunachal Pradesh

government to ensure life and personal liberty of every Chakma residing within the state. The Apex Court also directed the state government to enter the applications for Indian citizenships submitted by the Chakmas under Section 5 of the Citizenship Act in the register maintained for the purpose.

Montosh alleges that despite this, Supreme Court directive officials at local levels often refuse to accept such applications.

The government is yet to take a decision on 4,677 applications for grant of citizenship, submitted by the Chakma and Hajongs through CCRCAP. However, with the intervention of the Election Commission of India, names of 1,497 Chakma and Hajong youths born in Arunachal Pradesh between 1964 and 1987, were included in the electoral roll and allowed to exercise their franchise during the 2004 Lok Sabha polls.

In its 'White Paper on Chakma and Hajong Refugee Issue' published by Government of Arunachal Pradesh in 1996, the state government alleged: "Central Government hardly took any initiative to find a solution to the satisfaction of the local people. It seems that the central government never felt any urgency to resolve the problem as it failed to gauge the gravity of the issue, if left unattended to, in giving rise to a situation which may snowball into a major law and order problem, threatening the peace and tranquility in this 'Island of peace', in the turbulent north-east India."

C C Singpho, health minister of the state who represents Diyun-Babrdumsa assembly constituency asserted the state government's demand for immediate deportation of these refugees from the state and expressed the state's inability to bear the burden of welfare responsibilities such as education, health, issuing of family ration cards and others. "We strongly demand that these people should be immediately deported from our state. Even if it is taken into consideration that they are entitled for granting citizenship right under the Indira-Mujib Agreement, 1972, they must be taken away from our state first, before providing them the right in other states," he says.

Locals belonging to Singpho and Tangsa Naga tribes too have opposed the settlement of Chakma and Hajong refugees in the

locality right from the time of allocation of land to the refugee families. Their fear is two-fold—that customary laws and traditional rights of indigenous people living in surrounding areas will be violated, and also of being outnumbered by the huge size of refugee population, the minister says.

Such opposition by state administration even after 45 years of settlement of these refugees ultimately reflects not only issues like denial of job opportunity or livelihood crisis, but also basic human rights. It is difficult for an outsider to meet Montosh in his own residential pocket. The Office of the Deputy Resident Commissioner, Arunachal Pradesh where one has to apply for the Inner Line Permit (ILP) to enter into the state, is itself in Guwahati, the capital city of Assam. This office does not entertain any application for ILP for the Changlang and Tirap districts which house the refugee settlements, considering the sensitivity of the issue.

Differentiated Treatment of Refugees

However not all refugees suffer this fate in Arunachal. The state also shelters groups of Tibetan refugees at Miao, Tezu and Bomdila. The difference in treatment is easily visible between Tibetan refugees and the Chakmas and Hajongs refugees. The Choephelling Tibetan settlement in Miao has a well-defined territory having all basic facilities including assured education, health, vocational institutions meant for girl school dropouts and a comfortable livelihood support which also include employment opportunities mostly in the Indian Army.

According to eminent legal expert Dr Rajeev Dhavan, "Tibetans are often said to be the model refugee community and are among the best treated refugees in India with semi-autonomous settlements, government expenditure on their education, and freedom to pursue their cultural, social and political goals." (Refugee Law and Policy in India, published 2004, page 123).

Overdue-A Refugee-specific Legislation

At the micro level, issues including livelihood support as well as ensuring a dignified life of the Chakma and Hajong refugees are associated with granting of citizenship rights. But from a wider national perspective, the issue of addressing overall refugee

situations in India is centered round one pertinent question-does India need a refugee-specific legislation to address issues of all refugees in the country equally?

India is a safe home to countless refugees, mostly from South-East Asian countries, not only for accommodation but for livelihood support as well. Since the time of India's independence the country has experienced major population transfer. India successfully dealt with the process of rehabilitation of millions of partition refugees immediately after independence, many of whom were later locally integrated.

India also hosted about one lakh Tibetan refugees in 1959, who entered here with Dalai Lama. This was followed by two waves of Tibetan refugees in 1980 and 2000. The country experienced another major population influx of over 10 million refugees during Bangladesh War in 1971. Most of them were later returned to their homeland following creation of Bangladesh. We have also hosted over 80,000 Sri Lankan Tamil refugees and Bhutanese refugees. Apart from these there are 11,750 Afghan, Myanmar and other refugees under the mandate of the United Nations High Commission on Refugees (UNHCR) in the country. (The statistics have been gathered from the publications *Refugee Law and Policy in India* and *A Pocket Guide to Refugees* published by UNHCR.)

Besides, it has countless economic migrants, most of whom have illegally entered through porous India-Bangladesh border from Bangladesh inside its territory. India has been accommodating and dealing with such huge volume refugees, practically without having any refugee-specific legislation. The *Foreigners Act of 1946* is the only legislation that deals with all non-citizens within the Indian borders, making no differences between tourists, economic migrants, asylum seekers or refugees. This legislation is the core of all refugee-related issues in the country. The act bestows unlimited powers on the government to identify, arrest and prosecute any 'foreigners' they suspect to have violated any laws within the territory, making them vulnerable to attacks of political discretion.

In absence of a refugee-specific legislation or any systematic policy to deal with the refugees, Indian governments have dealt

with refugee issues of different groups with a differential administrative approach. This means, the approach varies for each refugee group with regard to their determination and treatment, as is the Tibetan case. Again, there is no policy guideline for individual refugees who have no alternative but to approach UNHCR for asylum.

According to UNHCR, the absence of a legislation on refugee protection has led to differential administrative measures between refugee groups and a national legislation for refugee protection would provide standardised and acknowledged principles for refugee determination and treatment.

An Eminent Persons Group has already come up with a Model Law in this regard, drafted under the aegis of Regional Consultations on Refugees and Migratory Movements in South Asia. This was made public in 1995. Justice P N Bhagawati as the Chairperson of the Drafting Committee of the India-specific version of the national law on refugee protection. However, Government of India is yet to take a decision on the subject.

Revert to 1964-69 position: AAPSU to Chakma-Hajongs

Returning back to the 1964-1969 position by identifying the Chakama-Hajong habitations and population, and evictions of the encroachments on any land after 1969 and deportation of the people arriving after 1969 was the clear message echoed by the All Arunachal Pradesh Students' Union in the first ever meeting of the Joint High Power Committee (JHPC) for resolution of Chakma and Hajong refugee issues of Arunachal Pradesh held today at State Banquet Hall. This was decided during the separate sitting of both AAPSU and Chakma-Hajong delegates only in the meeting. Joint secretary (NE) Ministry of Home Affairs Shambhu Singh chairing the day long meeting summed up that the JHPC would be most ready to take in the points deliberated by both the parties and come out for an agreeable solution. Stating that the JHPC was for looking into the issues of Chakma and Hajong refugees of Arunachal Pradesh, Singh reminded that the committee was not for the citizenship status of the refugees.

Earlier, state political secretary, Indira Mallo, convening the meeting said that the state government is keen to find a solution

to the vexed issue of Chakma-Hajong refugees of Arunachal Pradesh. Addressing the delegates at the start of the meeting, Singh said that the concerns seem to be genuine of both the parties involved and we should find a common ground so that the process is carried forward.

DC Lohit RK Sharma starting the deliberations detailed on the various encroachments in Reserve Forests by the Chakma-Hajong refugees, rise in number of criminal cases committed by the Chakma-Hajong refugees and the governmental facilities available to them. He also informed on the involvement of Chakma-Hajong refugees in armed groups indulging in organized crime like kidnapping, murder etc. It was an established report and fact which is being verified by the security agencies, added Sharma.

Addressing on behalf of the Chakma-Hajong refugees, Santosh Chakma of Committee for Citizenship Rights of Chakma-Hajong refugees of Arunachal Pradesh said, 'we look forward to new lease of life to us by providing us legal and political recognition as citizens of the state'. Agreeing that there was presencen of criminals in the community, he expressed concerns of increasing population of Chakma-Hajong refugees and lack of livelihood opportunities as causes for it. Categorically calling upon the government authorities to take stern action against the law breakers, he said that the response from the administration and police was not encouraging whenever crimes were reported to them. On the cases of land encroachments in RFs and into private lands, S Chakma said that the cases were sub-judice and the growth of population had led to it.

AAPSU legal advisor T T Tara speaking on the behalf of AAPSU advocated for the rights of the indigenous tribal people of the state citing the Bengal Eastern Frontier Regulation 1873, China Hill Regulations which were later incorporated in the Assam Frontier Regulation 1945.

Stating as the laws provide protection and safeguards for the existence of the indigenous tribal people of the state by prohibiting the entry of outsiders in the tribal area without ILP and where only the indigenous tribal people are allowed to enjoy land ownership and possession, Tara queried that when the non native Indians are prohibited from settlement in the state, how could the foreigners

like Chakma-Hajong could be facilitated for settlement and other facilities. He added that if at all the refugees are to continue in the present settlement the state government should formulate a package with necessary regulations of administration of the refugee settlement by viewing the rights of the native people and their genuine aspirations while having a humanitarian consideration towards the refugee population.

Later, AAPSU legal advisor Tony Pertin speaking after the separate sitting of only AAPSU and Chakma-Hajong delegates, sternly stated that reverting back to the status of 1964-1969 of the Chakma-Hajong refugees would be the starting point of any dialogue for the future on the issue. Criticising the Centre on the non inclusion of any AAPSU member in the JHPC as a member while including bureaucrats from New Delhi and Chakma-Hajong representatives as JHPC members, Pertin said it was step motherly treatment of the Centre yet again as it was a favourable attempt made by the Centre for refugees against the people of Arunachal Pradesh. When four Chakma-Hajong members are part of the committee then four from AAPSU should be also included in the JHPC, he asserted.

Further condemning the agenda of the very meeting, he said that points in the agenda are the concerns and developmental issues of Chakma-Hajong refugees whereas issues of the indigenous people of the state were absent. On human rights grounds the Chakma-Hajong refugees have rallied international and national NGOs and has pressurised New Delhi in their favour, while the human rights of the indigenous tribal people of the state have been violated and legal protections enshrined in Indian laws for us has been denied, he added.

The JHPC constituted on Aug 10 2010 under GoI order 13/2/ 2010 NE-II consists of Joint secretary (NE) GoI Ministry of Home Affairs Shambhu Singh as chairman, Joint secretary (F) GoI MoHA G V V Sarma, Joint secretary (NE) GoI MoHA Naveen Verma, PCCF GoAP, DCs of Changlang, Lohit and Papum Pare and Chakma-Hajong representatives SB Chakma, AC Hajong, PK Chakma and A Dewan. However today's meeting was participated by Joint secretary (NE) GoI Ministry of Home Affairs Shambhu Singh, Under secretary GoI MoHA SN Garg an expert on refugee

issues, DC Lohit RK Sharma, DC Papum Pare Pige Ligu, EAC Balijan T Taggu and a representative of DC Changlang and Additional PCCF GN Sinha. While Santosh Chakma of Committee for Citizenship Rights of Chakma-Hajong refugees of Arunachal Pradesh and three other members represented Chakma-Hajong refugees. The AAPSU legal advisors Tony Pertin and T T Tara, AAPSU president Takam Tatung, AAPSU general secretary Tujum Poyom, AAPSU vice president Nabam Tamar and JM Singpho a local representative of AAPSU were invited as special invitees.

The State of Being Stateless

It is very difficult – if not impossible to determine the exact number of Chakmas in Arunachal Pradesh. For one thing, the All-Arunachal Pradesh Students' Union (AAPSU) – the main body spearheading the movement for the disenfranchisement and expulsion of the Chakmas – and the Committee for the Citizenship Rights of the Chakmas of Arunachal Pradesh – the organization that demands Chakmas's right to citizenship-are seldom one in accord on the number.

Moreover, many of the Chakmas have allegedly been kept outside the scope of Census operations. For, it is widely feared that their enumeration would lend some sort of legitimacy to their claim to Indian citizenship. For another, it is also widely believed by a section of the local Arunachalese people that Chakma immigration from across both internal and international borders continues unabated till date.

As per a report of February 1995 from the Government of Arunachal Pradesh, the Chakma refugee population was 34,493. One more recent estimate, however, indicates that their number may be larger and in the range of 46,000 to 50,000. In a memorandum submitted by People's Referendum Rally for removal of Chakma/Hajong refugees, in September 1995 it is indicated that the number has swelled to over 60,000. The Census figure for Chakma and Hajong resettlement in Arunachal Pradesh indicates that in 1981, 24,083 Chakmas and 1433 Hajongs and in 1991 census, 30062 Chakmas and 2134 Hajongs were recorded. The decadal growth rate of the Chakmas, according to Census figures, has been 25 percent, compared to the state average of 36.83 percent.

The Profile of the Population Affected

The Chakmas and the Hajongs have been living in designated areas of Diyun and Bordumsa in Changlang, Chowkham in Lohit and Kokila areas of Papum Pare districts. In his appeal to the members of Parliament made on 8 August 1995, the President of the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) estimated the Chakma population at 66,000 approximately. Miao subdivision has the largest concentration of the Chakmas in Arunachal Pradesh. In 1981, tribals constituted a majority in all the districts of Arunachal Pradesh excepting Lohit and Dibang valley and the number of refugees of all varieties stood at 81000-although according to AAPSU – that was agitating for the repatriation of the refugees to Bangladesh – their number stands at 100,000. By 1991, the tribals lost their majority status also in Changlang formerly known as Tirap – where their fall has been rather sharp and spectacular (from 62.15 percent in 1981 to 34.83 percent in 1991). There has been a slight but steady decline of tribal population in all the districts. According to Ahmed, 'today there are 64,000 people of Chakma origin painfully fighting against the fury of the local people of Arunachal Pradesh' (Ahmed in Hazarika ed. 2003:243). The growth is phenomenal compared to the total population that stood at 8,58,392 according to 1991 Census. By all accounts, the number of Chakmas in Arunachal Pradesh is estimated to be around 60,000.

The Causes and Obstacles to Solutions to Statelessness

Due to the construction of the Kaptai hydroelectric project over the river Karnaphuli in 1962 with its funding from USAID – an overseas development agency – about 40 percent of the best agricultural land of CHT was submerged. The project displaced about 100,000 indigenous people comprising about one-third of the total indigenous hill peoples' population of that period, who were forced to evacuate the designated area.

According to the Government of India estimate, by the middle of 1964, at least 140,000 persons including Chakmas and Hajongs consisting of 2902 families had migrated to Assam. The then Government of Assam expressed their inability to settle such a large number of migrants in the State and consequently requested

for their shifting to other places. A suggestion was also made that a substantial number of families could be accommodated in NEFA as 'some surplus land was available there' and 'NEFA agreed to accommodate some new migrants including the Chakmas and Hajongs under the already approved scheme' (CCRCAP, n. d.: 2). During 1964-68, 2902 Chakma/Hajong families were settled in NEFA in three districts of Lohit, Tirap and Subansiri. Plots of land varying from 5 to 10 acres per family (including 3 to 5 acres of land on an average for cultivation) depending upon the particular size of the family was allotted to them under a centrally sponsored rehabilitation scheme. A cash grant for each family was also sanctioned by the Rehabilitation Ministry as rehabilitation grant. In addition to 2902 families settled in Arunachal Pradesh at that time, about 31,770 agricultural families were also settled in various other parts of the country. In addition, over 15000 non-agricultural families were also settled in some of the states of the country.

Arunachal Pradesh is a sparsely populated state with lowest population density (about 13 per square kilometer according to the 2001 census) amongst all the states in India. The tribal people formed 88.76 percent in 1961 which fell down to 63.66 percent in 1991. The rise of non-tribal population in Arunachal Pradesh over the decennial censuses is remarkable (9 percent in 1951, 12 percent in 1961, 40 percent in 1981 and less than 37 percent in 1991). The demographic decline has alarmed the tribal people of the state.

Since its NEFA (now Arunachal Pradesh) days even in the pre-Independence era, the area has enjoyed a 'Special Protected Area' status under the provisions of the Bengal Eastern Frontier Regulation of 1873. The State Government cites a series of legislative measures taken by the Central Government to uphold the essentially tribal character as well as the rights of the indigenous people in Arunachal Pradesh – some of these being 3 the Bengal Eastern Frontier Regulation of 1873, the Assam Frontier Tract Regulation of 1880, the Assam Forest Regulation of 1891 and the Chin Hills Regulation of 1876. These regulations, say Government sources, prohibit non-locals and non-residents from acquiring interest in land or in land produce, prohibit 'outsiders' from acquiring forest land, and empower the State government to extern any person, if his or her presence is considered to be harmful to

local interest. Arunachal Pradesh became a full-fledged Indian State under the State of Arunachal Pradesh Act 1986. The Inner Line Permit (ILP) system was introduced to ensure that the entry of 'outsiders' into the union was restricted.

It is not surprising to understand why there has not been any significant resentment against Chakma settlement during the initial years, that is to say, between 1964 and 1986. First, NEFA being the least sparsely populated of all the administrative units in India could provide enough land to the Chakmas so much so that they could be settled in areas by and large distant from those of others. There was little scope of interaction between the locals and the 'foreigners'. Secondly, since NEFA was kept out of the ambit of elections till 1979, the opinion of the indigenous people was never taken into account.

By all accounts, resentment of the locals against the apparently prosperous migrants was first articulated in the Changlang district by the AAPSU when its Changlang district unit enforced an 'economic blockade' upon the Chakmas in 1995, calling upon the natives not to buy anything from the refugees.

Though the refugee population was settled in a way that did not displace the local, indigenous population from their ancestral habitat, it created a potentially inflammable situation. The refugees were initially granted 10799 acres of land. As their population increased, they reportedly started encroaching on forest reserves as well as pastoral land of the indigenous communities. Since in the eye of law, they remain 'foreigners', they have no right to own land, designated for them.

In 1980, the State Government banned the employment of Chakmas and Hajongs. It stopped issuing trade licenses to members of either community. Furthermore, all trade licenses issued to them were seized in 1994. AAPSU organized economic blockade of the Chakma and Hajong refugee camps. The State Government started dismantling the basic social and economic infrastructure in the Chakma and Hajong settlements. In October 1991, the state government discontinued issuance of ration cards to the Chakmas and Hajongs, most of whom lived in extreme poverty and penury. In September 1994, the State Government began closing and burning down schools in these areas, effectively denying them their right

to education. Schools built by the Chakmas using local community resources were closed down or destroyed. Health facilities in the Chakma and Hajong areas were all but non-existent.

The phenomenal growth of the refugee population has its impact on the encroachment on forest land. During 1993-94 about 400 hectares of Diyun reserved Forest land was retrieved, which was under the illegal occupation of the Chakmas since 1986. Continued presence of the Chakmas and the Hajongs has 'started threatening the fragile eco-system of the State of Arunachal Pradesh'.

There are however primarily three sets of arguments in favour of the Chakmas claiming their right to protection, if not citizenship: One, the legal argument that the Chakmas need to be recognized as citizens is in consonance with the memorandum of understanding signed in 1972 between Sheikh Mujibur Rahman and Mrs. Indira Gandhi-the two prime ministers of Bangladesh and India respectively. The second argument is that the Chakmas have enormously contributed to the enrichment of the economy of Arunachal Pradesh. They have taught the indigenous people the art of rendering land cultivable and most importantly the technology of settled cultivation. The third argument is humanitarian. While the identity of the indigenous people could be an issue insofar as it faces threat, this per se cannot in any way be an argument for depriving the Chakmas of their most basic right to life and liberty, which they are entitled to as human beings.

The Legal Battle

On September 9, 1994, the Peoples' Union for Civil Liberties, Delhi brought this issue to the attention of the National Human Rights Commission, which issued letters to the Chief Secretary, Arunachal Pradesh and the Home Secretary, Government of India, making inquiries in this regard. On September 30, 1994 the Chief Secretary of Arunachal Pradesh faxed a reply stating that the situation was totally under control and adequate police protection had been given to the Chakmas.

On October 15, 1994, the Committee for Citizenship Rights of the Chakmas (CCRCAP) filed a representation with the NHRC complaining of the persecution of the Chakmas. The petition

contained a press report carried in *The Telegraph* dated August 26 1994 stating that the AAPSU had issued 'quit notice' to all alleged foreigners, including the Chakmas to leave the State by September 30, 1995.

The AAPSU had threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC. On October 12, 1995 and again on October 28, 1995 the CCRCAP sent urgent petitions to the NHRC alleging immediate threats to the lives of the Chakmas. On November 22 1994, the Ministry of Home Affairs, Government of India sent a note to the NHRC reaffirming its intention of granting citizenship to the Chakmas.

The issue was referred to the Supreme Court and the apex Court maintained: "We are unable to accept the contention of the first respondent (the State of Arunachal Pradesh), that no threat exists to the life and liberty of the Chakmas guaranteed by Article 21 of the Constitution, and that it has taken adequate steps to ensure the protection of the Chakmas ... The AAPSU has been giving out threats to forcibly drive them out to the neighbouring State which in turn is unwilling to accept them. The residents of the neighbouring State have also threatened to kill them if they try to enter their State. They are thus sandwiched between two forces, each pushing in opposite direction which can hurt them. Faced with the prospect of annihilation the NHRC was moved which finding it impossible to extend protection to them, moved this Court for certain reliefs" 5

On the question of rights, the Court clarified: "We are a country governed by the Rule of Law. Our Constitution confers certain rights to every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to the procedure established by law. Thus the State is bound to protect the life and liberty of every human being, he be a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so."

On the operational part, the Court ordered:

1. ... he State of Arunachal Pradesh shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organized groups, such as, AAPSU, shall be repelled.
2. Except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein.
3. The application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central government for its consideration in accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the concerned persons and shall be processed and forwarded to the Central Government for consideration (adapted from Chimni ed. 2000:513-14).
4. While the application of the individual Chakma is pending consideration, the State of Arunachal Pradesh shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf.

The Post-Verdict Scenario

The post-verdict scenario is marked by abject discrimination and haplessness of the Chakmas, although as our ethnographic account suggests, a section of the new generation Chakmas seems to have sensed a mild improvement of the situation in the sense that the court proceedings have lent to the issue a certain visibility so much so that it has now become a part of the human rights agenda in South Asia. Chakmas continue to find it difficult – as our ethnographic work suggests – to submit applications for citizenship and registration as voters.

The media interestingly plays a paradoxical role insofar as the Chakma issue is concerned. While the national media takes a

stoutly rights-sensitive stand and often pleads for accepting them as Indian citizens, the local media appears to be completely polarized along ethnic lines: On the one hand, such newspapers as *The Arunachal Times* and some others tend to paint an alarmist picture and focus on the threat the presence of the Chakmas along with such other communities as the Hajongs etc. poses to the demographic balance, land, ecology, culture and language of the indigenous people of the state. On the other hand, the Chakmas in Arunachal Pradesh allege that, the media of the state is completely biased in favour of the local communities of Arunachal Pradesh or the indigenous tribes of the state. The Chakma media publishing mostly in local language constantly highlight the importance of turning the Chakma issue into a human rights question and the imperative of conferring citizenship, which will go a long way in addressing their rights claims and concerns. Citizenship, for them, is the surest way to protect their human rights. We do not know whether any readership survey has ever been conducted on the state. By all indications, our team feels that the readership too is so sharply polarized in Arunachal Pradesh that the Chakmas hardly take the reports published in the mainstream media seriously and vice versa. Instead of building bridges, media contributes to the reinforcement of the conflict between the locals and the migrants.

Proposed actions to address the problems of stateless Chakmas in India

Where do we go from here? There are at least three major issues which have to be taken into consideration before any recommendation is attempted: First, it calls for a certain renegotiation of the federal relations between the Centre and the states. While the Central Government urges on the State Government to carry out what it considers as its 'national' responsibility (CCRCAP n. d.: 3), the State Government accuses the Central Government of having taken a 'callous and indifferent attitude' towards the 'unanimous demand' of the people of the State. Secondly, one has also to understand that there is a limit to what law and law courts can do. The law and law and courts perhaps did and do their best insofar as the Chakma issue is concerned; but these get stonewalled by the implementing

authorities of the state. Options along the legal trajectory seem to have been exhausted. Thirdly, and this is a corollary to the second, civil society including media inside Arunachal Pradesh is highly fractured – indeed polarized between two mutually opposite forces. While a part of it gravitates around the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh, most of the mainstream society in Arunachal Pradesh looks upon the All-Arunachal Pradesh Students' Union as the leading light.

The crux of the problem lies in the fact that the rights claims of the Chakma refugees come into conflict with the rights claims of the indigenous tribes with a 'distinct way of life'. It is only apparent that any initiative in this regard has to enlist wider social acceptance so that it is viewed as acceptable by the contending parties. One has to understand that rights-based solutions may not necessarily be acceptable solutions. How does one set the ball rolling? One possible step in this regard is to organize a series of dialogues till one becomes successful because we just cannot afford to be unsuccessful in this regard. Obviously this is going to be a long process. It is important that we organize dialogues with lower or middle-level leaders and that per se may be regarded as an achievement in an otherwise stalemated situation. These dialogues may be organized by CRG in a third venue presumably outside Arunachal Pradesh. CRG is ideally suited to launch the initiative and dialogues to begin with may take place in third party venues.

40 years on, Chakma refugees win right to vote

The reason: his daughter Helen will be one of the first batch of 1,497 privileged Chakma and Hajong refugees of Arunachal Pradesh exercising their right to vote when polling takes place on May

Even though Mr. Chakma himself did not get the franchise, he is busy trying to get the young voters of his community understand the importance of exercising their franchise, earned after a relentless struggle of 40 years. Mr. Chakma is also the assistant general secretary of the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) that has been fighting for Indian citizenship for over 60,000 Chakma and Hajong

refugees living in Arunachal Pradesh. The Chakma and Hajong refugees in Arunachal Pradesh fled their ancestral land in the Chittagong Hill Tracts of Bangladesh following religious persecution of these Buddhist followers.

"We have decided to form committees in each Chakma village to ensure that every Chakma voter with voting rights exercises this hard-earned right. On the day of the polling the village elders will accompany these young voters to the polling station. The granting of voting rights to Chakma and Hajong youths is an important step in our struggle for citizenship rights," Mr. Chakma says.

The boycott call given by the All Arunachal Pradesh Students Union (AAPSU) in protest against granting of voting rights to the Chakma and Hajong refugees seems to have made no impact in Diyun, which has the highest concentration of refugees. However, the election department has identified all the 14 polling stations, of which eight are in Chakma and Hajong settlements, as sensitive and has arranged adequate security to ensure that Chakma and Hajong voters are not prevented from voting.

Expressing full confidence that the polling would pass off peacefully, Assistant Electoral Registration Officer, T. Rumi, said that personnel of the Border Security Force and India Reserve Battalion besides Arunachal Pradesh Police have already been deployed in the polling areas.

Leaders of the Singpho and Khamti, local Arunachali tribes, have also not opposed granting of voting rights to the Chakmas and the Hajongs. "We are happy that our Chakma and Hajong brothers will be voting for the first time. The Singphos and Chakmas have many things in common. Both follow the Hunyan sect of Buddhism. Since they have been given shelter by the Indian Government we feel that they should be granted their constitutional rights too," says former MLA K.G. Singpho who met Bimal Chakma to discuss the elections. In sharp contrast to the protest by the AAPSU in Itanagar, posters of the Independent candidate Tony Pertin could be seen in Lohit and Changlang districts sporting the legend "Supported by AAPSU."

Though numerically the 1,497 Chakma and Hajong voters are insignificant in the poll battle between the sitting MP, Wangcha

of the Congress, and Tapir Gao of the Bharatiya Janata Party (BJP), the Chakma and Hajong refugee issue has tended to dominate Arunachal Pradesh politics.

Only those descendants of Chakma and Hajong voters were included in the voters list who were born in Arunachal Pradesh between 1964 and 1987 after the Election Commission directed the State Election Department to undertake a special summary revision of the rolls in May last year. The CCRCAP moved the Delhi High Court after the State election department rejected its application for inclusion of Chakma names in the electoral rolls.

Thirtytwo-year-old Kriti Bikash Chakma, a graduate of Assam's Dibrugarh University, is excited to have received the right to vote. "We are grateful to both the Central and the State Governments for giving us the right," he says.

Little to Cheer for Chakma Refugees in India

Villagers in Diyun, a farming hamlet in India's remote northeast state of Arunachal Pradesh, wake up to the crack of dawn. They peep out of their huts and look at the sky. With clear weather, they set out for work. It's just another routine day for the villagers-tilling on their farms and running household chores. Not many are aware of the fact that it is World Refugee Day. That's ironic because 80 per cent of this village, which houses 500 families, belongs to a refugee community, the Chakmas.

Since 2001, the United Nations High Commissioner for Refugees (UNHCR) has marked World Refugee Day on June 20 to draw attention to the plight of all those forced to leave home. According to the UN refugee agency, there are 42.5 million refugees in the world. The Chakmas of Arunachal Pradesh make up only a tiny percentage of that figure-which is perhaps the reason why their story is forgotten.

Chakma village in Arunachal Pradesh

According to the East-West Centre Washington, about 100,000 Chakmas, a tribal group from the Chittagong Hill Tracts of Bangladesh, fled erstwhile East Pakistan between 1964 and 1969 for two reasons-communal violence and displacement. A minority Buddhist tribe, they faced oppression on grounds of religion and

ethnicity at the hands of the East Pakistan government. (Religious and ethnic persecution of tribal groups in the Chittagong Hill Tracts continues to this day.) Secondly, the construction of the Kaptai hydroelectric dam rendered many thousands of Chakmas landless.

Arduous Journey

As a result, 35,000 Chakmas migrated to Arunachal Pradesh that borders China and Myanmar. Hemantolal Chakma's family was among those who left in search of refuge. The 48-year-old farmer from Diyun was a toddler when he undertook the arduous journey.

"I don't remember anything from those days. But my mother and father told me that it was very tough. Our land had submerged under water because of the dam. We were stranded without any possessions and had to leave. We entered India through Mizoram and settled here in Arunachal Pradesh. I hear it was very difficult in those days. No food to eat, no shelter," he says.

Refugees: Quick facts

- According to the UN, a refugee is someone who is "outside the country of his nationality" due to fear of being persecuted "for reasons of race, religion, nationality, membership of a particular social group or political opinion".
- As of last year, there were 15.2 million refugees in the world.
- One of every four refugees originates from Afghanistan.
- Pakistan hosts the most refugees of any country, with 1.7 million. Iran has an estimated 887,000 refugees, and Syria has about 755,400.

Hemantolal lives with his wife in a thatched hut. There's no furniture in their dimly-lit home. One corner of their single-room hut functions as a kitchen and another as sleeping area. "This is how a poor person's house looks," he apologises.

Although he's lived most of his life within these four walls, Hemantolal doesn't feel at home here. "It's a sorry state of affairs. I don't have any rights in this place. I can't vote, I can't call myself a citizen," he explains.

Like Hemantolal, most Chakmas in Arunachal Pradesh have been denied Indian citizenship or refugee status despite having migrated legally, with valid migration certificates issued by the government of India. Moreover, after signing an agreement with Bangladesh in 1972, the government of India accepted all responsibility for the Chakmas who migrated before March 1971.

Twenty years later, the central government declared that the Chakmas have a legitimate claim to Indian citizenship. However, in April 2004, the state government granted voting rights only to 1,500 Chakmas, leaving 50-60,000 of them still stranded.

Respect Denied

Apart from the lack of legal rights, the Chakmas also face discrimination on a daily basis. Sanjay Chakma, 35, who was born in India, regrets belonging to his tribe. "Sometimes I am sad that I was born a Chakma. I wonder why I am one. The other tribes in the region view us with such disdain. We are humans too, but we are denied the rights of humans," he says.

Sanjay says that many of his friends and acquaintances have been assaulted in broad daylight by members of other tribes. "You will hear cases of Chakmas being beaten up in public places. There is an image of Chakmas being criminals, doing wrong things. There's not always an element of truth in it. We don't get respect at work place. We have no other option but to endure how we are treated," he says.

"Most of us have no proof that we exist. Isn't it easy to erase records that never existed?" -Sanjay, a Chakma man

The South Asia Human Rights Documentation Centre (SAHRDC) has not only accused the state government of Arunachal Pradesh of human rights abuses against the Chakmas but also of denying educational and employment opportunities to them.

"In September 1994 the Government began a campaign of school closings, burnings, and relocations which has effectively denied the Chakmas their right to education under international law," the SAHDRC says. Even today, studies point out that schools in Chakma-dominated areas have an abysmal student-teacher ratio of 300:1.

Sanjay lives with his wife and three kids. Five-month-old Joshua is Sanjay's youngest son. It's a lazy afternoon and Joshua is crawling on the floor. Sanjay points to him worriedly and says he isn't sure of what his son's future has in store. "I haven't been able to get a birth certificate for him. The authorities make it very difficult to legally register newborn Chakmas," he says.

Sanjay claims to have made repeated rounds to the local registration office in Diyun district to acquire a birth certificate for Joshua. "There are two days in the week to register for birth certificates. Every time I went to the office on these days, they would send me back and ask me to return again. After many attempts, I got tired of it," he says.

Sanjay thinks it is a deliberate attempt by the state government to deny the Chakmas an identity. "Most of us have no proof that we exist. Isn't it easy to erase records that never existed?" he says, adding, "I'm surprised you know about us. Nobody has bothered to find out."

'Criminals'

Members belonging to other tribes in the region accuse Chakmas of criminal activities. Shivumso Chikro, who belongs to the Mishmi tribe, is an assistant professor of history at a college in the state's capital of Itanagar. He believes that the Chakmas should have legal rights but also expresses his apprehensions.

"The Chakmas are involved in a lot of criminal activities. They have expanded their territories. They have taken over land that belongs to other tribes and inhabited them. They should live in the land that has been allotted to them and not take over other people's land," Shivumso says.

He goes on to cite a close encounter: "Where my grandmother lives, there are also some Chakmas residing. One night she got looted by some Chakma miscreants who took away her traditional silver jewellery and everything she had. How do you justify that?" he asks, agitated.

The state government of Arunachal Pradesh seems to share Shivumso's fears. An academic paper published in 1996 says: "The government officially notes the Chakmas' 'propensity towards crimes and other anti-social activities.'

Hoping against hope

The Chakmas are still hopeful of a better future. Two years ago, a parliamentary committee set up by the Indian government vowed to look into their citizenship issue. Bimal Kanthi Chakma, an executive member of the Committee for Citizenship Rights of Chakmas of Arunachal Pradesh (CCRCAP), says they are now in negotiations with the state and central governments.

"I hope that the dialogue will be fruitful. Right now only a very few of us have voting rights. But this right has to cover many more people. We are also fighting to have the right to contest elections here," Bimal Kanthi says. He refrains from sharing more thoughts on the issue, fearing it will affect the outcome of the negotiations.

On being asked by Al Jazeera what progress had been made on the Chakma citizenship issue in the past 60 years, the state government gave no comments. It therefore remains unclear when the negotiations will have an outcome that will decide the fate of thousands of Chakmas.

Little to Cheer for Arunachal, India Chakma Refugees

Nearly 35,000 Chakmas migrated to Arunachal Pradesh after being persecuted in both Bangladesh and Pakistan. However, Chakma refugees have no rights in India and are unable to vote or call themselves citizens. Villagers in Diyun, a farming hamlet in India's remote northeast state of Arunachal Pradesh, wake up to the crack of dawn. They peep out of their huts and look at the sky. With clear weather, they set out for work. It's just another routine day for the villagers — tilling on their farms and running household chores. Not many are aware of the fact that it is World Refugee Day. That's ironic because 80 percent of this village, which houses 500 families, belongs to a refugee community, the Chakmas.

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Washington, about 100,000 Chakmas, a tribal group from the Chittagong Hill Tracts of Bangladesh, fled erstwhile East Pakistan between 1964 and 1969 for two reasons — communal violence and displacement.

A minority Buddhist tribe, they faced oppression on grounds of religion and ethnicity at the hands of the East Pakistan government. (Religious and ethnic persecution of tribal groups in the Chittagong Hill Tracts continues to this day.) Secondly, the construction of the Kaptai hydroelectric dam rendered many thousands of Chakmas landless. As a result, 35,000 Chakmas migrated to Arunachal Pradesh that borders China and Myanmar. Hemantolal Chakma's family was among those who left in search of refuge. The 48-year-old farmer from Diyun was a toddler when he undertook the arduous journey.

"I don't remember anything from those days. But my mother and father told me that it was very tough. Our land had submerged under water because of the dam. We were stranded without any possessions and had to leave. We entered India through Mizoram and settled here in Arunachal Pradesh. I hear it was very difficult in those days. No food to eat, no shelter," he says. Hemantolal lives with his wife in a thatched hut. There's no furniture in their dimly-lit home. One corner of their single-room hut functions as a kitchen and another as sleeping area. "This is how a poor person's house looks," he apologizes.

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Twenty years later, the central government declared that the Chakmas have a legitimate claim to Indian citizenship. However, in April 2004, the state government granted voting rights only to 1,500 Chakmas, leaving 50-60,000 of them still stranded. Apart

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On being asked by Al Jazeera what progress had been made on the Chakma citizenship issue in the past 60 years, the state government gave no comments. It therefore remains unclear when the negotiations will have an outcome that will decide the fate of thousands of Chakmas. As part of its World Refugee Day project, the UNHCR is running a campaign titled "No one chooses to be a refugee". The Chakmas in Arunachal Pradesh know little about the campaign, but there's no doubt that it matches their sentiment.

The Chakma and Hajong Question in Arunachal Pradesh

The question of the deportation of the Chakmas and Hajongs, the Buddhist and Hindu refugees from the erstwhile East Pakistan, from the State has continued to occupy the centre-stage of Arunachal Pradesh politics for quite some time now. The "Refugee Go-Back" movement originally launched by the All-Arunachal Pradesh Students Union (AAPSU), which has consistently held the view that the refugees are 'foreigners' and Arunachal cannot be made the 'dumping ground', gained momentum in the wake of the 'People's Referendum Rally' held on September 20, 1995 at Naharlagun, Itanagar. It was at this rally that AAPSU and the leaders of all existing political parties in the State including the ruling Congress (I) under Gegong Apang, the Chief Minister of the State since 1979 had set December 31 as the deadline for the centre to evict the refugees from the State. Also the leaders of all existing political parties present at the rally had vowed to resign from the primary membership of their respective parties and form a 'Common Organization of Indigenous People' if their demand was not met by the Central Government before the expiry of the deadline.

What has, however, happened in the post-deadline phase of the movement was only expected. The central Government did intervene at the eleventh hour by announcing the formation of a 'high-level committee' to look into the matter. Acting on a petition filed by the National Human Rights Commission (NHRC), the Supreme Court in its recent verdict of January 9, 1996 has ruled out any forcible eviction of the refugees by directing the State Government to seek all possible help from the Central Government to protect the lives of the refugees residing in the State. In opposition to the pronouncement of this verdict by the Supreme Court, a 15-member core committee comprising largely of members from the Apang Ministry and some other important leaders from the opposition parties has been set up to look into the question of deportation of the refugees from the State. Expressing its resentment over the verdict, AAPSU has further hardened its stance on the refugees issue by declaring that they are not bound by the verdict. Protesting against the verdict, AAPSU gave a 10-hour *bandh* call

on Republic Day making its celebration only symbolic in nature.

The existing situation in the State over the refugee issue throws open a series of questions to any casual observer. Does the continuing presence of the refugees in the state really pose that big a threat that it deserves the adoption of such extreme positions as taken by all important political and non-political forces alike at the rally held in September? Who is to be blamed for their continuing presence in the State, anyway? Would it be fair to blame it on to the refugees for where there are today, for it was certainly not they themselves who opted to stay in Arunachal Pradesh? Or, can they simply be blamed for not having a home and seeking refuge in India? After all, what was it that made them seek shelter in India? Moreover, what was it that brought them, of all the places in the country, to the state of Arunachal Pradesh?

The Buddhist Chakmas and Hindu Hajongs, the innocent victims of partition, originally belonged to the Chittagong Hill Tracts and Maimensingh districts respectively, a part of erstwhile East Pakistan (now Bangladesh). Pakistan's policy of persistent religious persecution of these Buddhist tribes and the displacement caused by the Kaptai Hydel Power Project forced them to migrate and take refuge in India in 1964.

But what was it that made these refugees finally settle down in Arunachal Pradesh which has been enjoying a 'Special Protected Area' status since the pre-independence period under the provisions of the Bengal Eastern Frontier Regulation, 1873? According to this regulation even Indian citizens of other states cannot stay in Arunachal Pradesh permanently. In other words, any Indian citizen from states other than Arunachal Pradesh, as per the rules of the regulation, cannot own any piece of land or develop any permanent stake in the State. Interestingly, following an order issued by the Governor-General in 1876 even the British subjects were prohibited from going beyond the inner-line without a pass under the hand and seal of an authorised political officer. This protectionist policy has been continuing uninterruptedly since then with the objective of safeguarding the indigenous culture and identity of the Arunachalees from the onslaught of external influences. It is, therefore, only natural for the Arunachalees to demand an explanation for the arrival and continuing presence of

the refugees in the state despite all these protectionist measures adopted by the Government of India.

Initially, only about 57 families of Chakmas and Hajongs were given shelter in government camps at Ledo in Dibrugarh, Assam in 1964. Thereafter, they were settled in Abhaypur Block of Diyun circle of the erstwhile Tirap District of Arunachal Pradesh purely on temporary and humanitarian grounds by the then North-East Frontier Agency (NEFA) administration which was directly under the control of the Central Government. This idea of temporary settlement of the refugees in this region was basically a result of an understanding in 1964 between the then Governor of Assam, Vishnu Sahay and the then Chief Minister of Assam, B.P. Chaliha. Vishnu Sahay felt that the continuing presence of the Chakmas in the Mizo district might lead to Mizo-Chakma conflict and so he suggested to the then Chief Minister that they be settled temporarily in Tirap division of NEFA which was thinly populated at that time. It is this element of temporariness of their settlement in the state which has now become a bone of contention between the people who are leading the movement and the Central Government.

At present the Chakmas and Hajongs are settled in Chowkham in Lohit district; Miao, Bordumsa and Diyun in Changlang district, and Balijan and Kokila in Papum Pare district of Arunachal Pradesh.

The indigenous people of the state perceive a danger to their identity and culture being posed by an ever-increasing concentration of the Chakmas and Hajongs in the state. According to AAPSU, the population of the refugees has swollen to approximately 60,000 as against the 57 families originally settled in 1966 in Diyun. It may not be fair to blame it on the indigenous people for their increasing assertiveness on the issue of eviction of the refugees from the state for they fear that rapid demographic changes in the three districts since 1951 may soon see them being outnumbered with all its concomitant social, economic and political consequences.

For example, according to the figures given in the 1991 census, the indigenous tribal population of the two districts of Lohit and Changlang where the Chakmas and Hajongs are residing, is only 74,000 out of the total population of 202,523 (which includes other Indian citizens also) in these two districts. The total population

of the state according to the 1991 census is 858,392. The issue of granting citizenship to the refugees has also figured prominently in all debates and is being considered seriously by the Central Government. S.B. Chavan's repeated remarks in this respect has met with strong opposition from all quarters in the State. AAPSU has strongly condemned Chavan's insistence on granting citizenship to the refugees and believes that it is an attempt to woo the potential voters at the cost of annoying the indigenous people of the State. Could the grant of citizenship end the helplessness of the refugees? Maybe not as the real issue facing the leaders of the movement is not whether the refugees be granted citizenship or not but that they must be resettled outside the state. The State Government is quite determined that even if the settlers were to be granted citizenship they would have to leave the State.

Though the Chakmas and Hajongs have continued to stay on in the state they have suffered immensely for no fault of theirs as they themselves did not volunteer to come to Arunachal Pradesh but were instead brought here as a matter of policy decision. The withdrawal of basic amenities like employment opportunities, termination of trade licence and confiscation of ration cards have made it quite difficult for the refugees to survive. Faced with frequent quit notices issued by AAPSU and the Centre's insincerity in finding out a long term solution, the refugees find themselves in the midst of uncertainty.

Indigenous Chakma Refugees

The Chittagong Hill Tracts (CHT) Indigenous People and Culture

The Chittagong Hill Tracts (CHT), covers an area of 13,190.17 square kilometers (5,093 square miles), constituting about one tenth of the landmass of the country, is the southeastern part of Bangladesh. From the time immemorial the CHT have been the home of 11 indigenous ethnic indigenous minority groups. They collectively identify themselves as the Jumma people, the first peoples of the CHT. They are Chakma, Marma, Tripura, Tanchangya, Mro, Lushai, Khumi, Chak, khyang, Bawm and Pankhua. The Jumma people are distinct and different from the majority Bengali population of Bangladesh in respect of race, language, culture, religion and ethnicity. The introduction of different minority indigenous people in the CHT is given below:

The Indigenous People in the Chittagong Hill Tracts

The Chakma

The Chakma is the largest ethnic minority group in Bangladesh. Although Bengalis number more than Chakma in the CHT, there are more Chakma in the CHT than all the other Indigenous peoples put together. A large number of Chakma also live scattered about in the states of Tripura, Mizoram, Assam and Arunachal Pradesh in India. They are estimated to number about 150,000. Besides, a small number of Chakma also live in Cox's Bazar district and in Myanmar. According to the census of 1991, the total number of Chakma in the CHT was 239,417. It is unlikely that the 1991 Census accounted for the more than 50,000 refugees from the CHT

were in refugee camps in India. The vast majority of these refugees is Chakma. Even otherwise, many indigenous groups in the country believe that their number is actually far higher than is recorded in the official government estimates. It is not known how far this belief is true, but there is no doubt that the actual number of Chakma who are residents of the CHT is far higher than the figure recorded in the Census Report of 1991.

The Chakma language belongs to the Indo-European family of languages and has close links with Pali, Assamese and Bengali. The Chakma have their own script in which their ancient religious literature is preserved in palm leaves. The script has similarities with Mon Khmer and Burmese. Although many elderly Chakma still sign their names in the Chakma script, most Chakma youths no longer use the script. At school, the Chakma study in Bengali and in English. The Chakma have perhaps proved to be the most adaptive and innovative of all the indigenous peoples of the CHT. By nature, most Chakma are down-to-earth and socially shy, but nevertheless romantic, although they will seldom admit it. The head of Chakma society is the Chakma Chife who is descended from the general who led the resistance movement against the British East India Company's forces in the 1770s.

The Chakma have been followers of Gautama Buddha for long but the Chakma brand of Buddhism always had room for indigenous gods and spirits, including some from the Hindu pantheon. Today, the Chakma are almost 100% Theravada Buddhist.

The Marma

The Marma is the second largest indigenous ethnic group in the CHT. They have been Theravadan Buddhists, like the Burmese, Thai and Sri Lankan, for many centuries. The Marma have their own script and speak a language which is almost identical to that of the Rakhine or Rakhaing of Cox's Bazar and Patuakhali districts in Bangladesh and Arakan states in Myanmar (Burma). The 1991 census puts the total number of Marma in the CHT as 142,334; 59,228 in Bandarban, 42,178 in Khagrachari and 40,868 in Rangamati.

The Marmas are great lovers of music and drama. Before the advent of the cinema and television throngs of Marma youth in their best attire would pass the better part of a night watching folk

dances and operatic performances. The Marmas are very fond of fairs. They have the peculiar knack of converting even their religious festivals into occasions of fun and gaiety. Traditionally, both men and women are fond of smoking pipes and cigars, all locally made. Rice beer or distilled rice spirits are very popular among the men. Among the Marma, there are both swidden agriculturists and sedentary rice farmers. Of the hill peoples of the region the Marma usually make the best traders although the Chakma are also trying hard to become retail traders. The Marma language is soft and poetic and even people who do not understand Marma love to hear Marma songs.

The Marma in the southern CHT, including all of Bandarban, owe traditional loyalty to the Bohmong Chieftain, Bohmongri who traces his lineage from Burmese generals. The Bohmong is the supreme arbiter on the personal laws of the indigenous peoples in his territory.

Today, apart from farmers, many Marma are traders, service-people and professionals such as doctors, engineers, etc. As with the Tripura and other peoples speaking a Tibeto-Burman tongue, The Marma also start out with a disadvantage with the medium of instruction in schools being in the Bengali language. Introduction of primary education in the Marma language is believed to be a necessary step for the progress of education among the Marma. They have a beautiful language. It certainly deserves official recognition.

The Tripura

The Tripura, most Tripura call themselves Tipra, the Tripura have about 36 sub-groups or dafas, the most well known of which are the Fatung, Jamatia, Naitong, Noatia, Ryang and Usui. The Tripura language belongs to the Bodo branch of the Tibeto-Burman family of languages. Although many Tripura follow their own gods, They also venerate such Hindu gods and goddesses as Lakshmi, Ganga, Saraswati, Kali and Shiva.

According to the Census of 1991, the total number of Tripura in the CHT was 61,129 out of which more than three quarters lived in the Khagrachari district alone, bordering Tripura state of India. There are more than half a million Tripura in Tripura State,

India. A very small number of Tripura also live in the districts of chittagong, Comilla, Noakhali. Before they were marginalized from their lands, a significant number of Tripura used to live in these districts. Like the Tanchangya, the Tripura too were traditionally swidden cultivators although they have now diversified into many occupations. The Tripura have many university graduates nowadays, but their language is so different from Bengali that they face Disadvantages in studying in Bengali from their earliest years. The introduction of primary education in the Tripura Language will most likely lead to a vast improvement in the rate of literacy of the Tripura.

The Tanchangya

Most of the Tanchangya live on the borders between the Rangamati and chittagong districts and between the borders of the Rangamati and Bandarban districts. A small number of Tanchangya also live in Cox's Bazar district. The Tanchangya are in number 19, 221 in the CHT according to the Census of 1991. In Arakanese, the word "Taung" or "Tong" means hill and "Taungya" means hilltop swidden cultivation know locally as jum. The word Tanchangya or Tanchangya is believed to mean hill swidden farmer. The Tanchangya are traditionally Buddhist.

Despite the fact that the Tanchangya are known traditionally to be swidden farmers, they were in fact one of the first of the CHT peoples to take up wet-rice cultivation by the plough in lieu of swidden cultivation. Today, there are many Tanchangya graduates, both men and women, holding private and government jobs.

The Tanchangya are known to be very romantic and artistic. They traditionally attired Tanchangya women will always wear her turban that Chakma women used to a generation or two ago, and the pattern on the border of her homespun skirt will usually be far more intricate than the Chakma skirt. It is said that in many cases the Tanchangya groom is younger than his bride. This was common until about a few decades ago. The Tanchangya are very musical. Love and romance are therefore never far away.

The Khumi

The Khumis maintain that in their khumi language kha means man and mi means best race. They are therefore "Khumis" i. e.

The best human race (Sattar 984:336). (Lewin 1869:88) on the other hand tells us that in the arakanese language "Khe" means "dog" and "Mi" is race the Khumis therefore are the dog race. Dog is a favorite item of food of the Khumis, so they might have derived this name from this (Bernot 1964:166). According to their oral tradition human kind owes its creation to a dog. Dog was the first creation, and it had saved humans from total annihilation, They accordingly pay homage to it. In 1869 their population was 2000. They owed their allegiance to the Marma Bohmang chief and paid a yearly tribute to him through their village headman (Lewin 1869:87-88). They head come to the hills of Chittagong from the hills of Arakan and Akyab in the seventeenth century.

The Khumis live on the ridges of hills and build their houses on tree-tops. Their villages are surrounded by bamboo walls. They were a ferocious race who were mostly engaged in warfare. They are renowned for their loyalty to their chiefs they take the oath of loyalty by touching the blood of a goat, Which they have killed with a sharp weapon; they vow that a similar fate would befall them if they break the oath of loyalty.

The Khumis claim to be Buddhists, but their beliefs and religious rites are animist. Their chief god is pathian. They also pay homage to "Nadog" the household deity, and "Bogley" the water deity. They are divided into "wife-giving" and "waif-taking" clans. The eldest son inherits all the property. They have an oral language which belongs to the southern branch of the kukish section (Shafer 1955:105). They believe that if they learn any other language they will loose their power to resist evil.

The Mro

The Mro in 1869 their population was 1,500. They had no chief of their own and owed their allegiance to the Marma Bohmang chief of Banderban. Each village had a chief who collected tributes from each head of the family for the Bohmang chief. The village chief's position was hereditary (Lewin 1869:86-88).

The Mors are animists. Their creator is "Turai", they have two other gods: "Oreng and "Sungtiang". They do not have any priesthood or religious books. They believe that a bull which was sent by God Turai to carry the religious book for them had eaten

up the book on the way. They therefore hold a special ceremony called "Nasyat pa" or "Kumlong" in which a bull is ceremoniously killed. They have an oral dialect which belongs to the Tibeto-Burmese linguistic family (Bernot 1964:159) (Shafer 1995:103) however considers it to be a category by itself.

The Lushai

The Lushai they migrated into the Chittagong hills from the Lushai hills of India some 150 years ago. Before the British conquest of the Lushai hills in 1892, the Lushais were extremely ferocious. They choose mountain tops as their abodes. Entrance to the village was heavily guarded. They are animists, "Pathian" is their chief god; he does no harm to people. The Lushais are divided into different sects. It is a patriarchal society. the youngest son inherits but does not bury their dead. The body clad in beautiful clothes is kept in a sitting position inside a bamboo cage. A fire is lit beside the body for a period of three months. After this the bones are removed and then buried. They have a language of their own known as "Lushai" or "Doine" (Shafer 1955:107). During the British administration missionaries were active among them, as a result most of them took to Christianity. Their language too can be written in Latin script.

The Kiang

In 1869 the Kiangs were a small group of people. Their social organisation was similar to those of the Mros and Khumis. They owed their allegiance to chiefs in Burma. The Kiangs call themselves "Hyou". They believe that some 200 years ago their chief had sought refuge from war in the hills of Chittagong from Burma. His younger wife who was pregnant accompanied the chief. But he left behind this wife of his and some other soldiers and went back to Burma. The Kiangs believe that they are descendants of those soldiers left behind (Chowdhury 1983:56). They have no sub-castes or sects. They are Buddhists but they also pay homage to "Nada Ga" (household deity) and "Bogley" (water deity). Their language belongs to the Kuki-Chin group (Chakma 1993:92).

The Bawm & Pankhu

The Bawm and The Pankhu. These two groups were offshoots

of two brothers who belonged to a Lushai group. Their population in 1869 was about 3000. They owed their allegiance to the Bohmang chief and paid tribute to him through their elected Headman. The Bawms and Pankhus believe that they are descendants of the "Shan" nation of Burma (Grierson 1927:144).

Formerly they were a ferocious people who built their houses on mountain tops. Their villages were very heavily armed and guarded. They lost their military skills after their annexation by the British. They were animists. Their main gods were "Pathian" and "khozing". But due to missionary activities during the British period most of them took to Christianity. One can differentiate between the Pankhus and Bawms by their hairstyles.

The Bawms both men and women tie up their hair at the centre of the head. The Pankhus on the other hand tie up their hair at the back of their head (Sattar 1984:312). Their language has strong resemblance to Lushai. It belongs to the "Kuki-Chin" group.

The Chak

The Chaks are considered to be a sub-group of the chakma (Lewin 1869:65). But loffler maintains that the saks living in Arakan and the chaks in CHT. Descended from the same people as the chakmas. The Chaks call themselves "Asak", The Sak population in Arakan also calls itself "Asak". Their language resembles Kadu which is spoken in Myitkhyina district of northern Myanmar, and also with Andro and Sengmai languages of Manipur district in India. The Chaks are divided into two sects: Ando and Ngarek. They are Buddhists. This all about the identity of indigenous people in the CHT in Bangladesh.

Refugees of Spirit

Hill women weaving colourful pinons (sarongs), their golden-brown skin glinting in the sun; clusters of bamboo and thatch huts; naked children prancing about; men huddled together, smoking or playing cards... To eyes accustomed to the dirt and filth of urban India, these images are a soothing balm. It is easy to forget that these men, women and children are among the worst-off refugees in South Asia. The accompanying pictures show Takumbari relief camp, more than 100 km from Agartala, the capital of India's northeastern state of Tripura, where more than 2000 families of

Jumma tribals, primarily Buddhist Chakmas, have been languishing in wretched conditions for over a decade. Takumbari is the largest of six camps set up in Tripura for Chakmas. About 15,000 refugees have returned home since 1994 following agreements between India, Bangladesh and refugee leaders. But around 44,000 remain here.

Every night, in the camp, the clang of the temple bells is punctuated by the staccato notes of the news bulletin. The refugee guards, marching round the camp, pause every once in a while to listen to the Bengali service of the BBC. Every bit of news on the latest negotiations between tribal leaders from the hill tracts and the Bangladesh government.

Elusive Peace

Peace talks are nothing new between the Bangladesh government and the Parbatya Chattagram Jana Sanghati Samiti (PCJSS)-the political wing of the Shanti Bahini (Chakma guerrillas fighting the Bangladesh state). But this time, Sheikh Hasina's government in Dhaka seems keen on a political solution to the long-festered problem. Nearly 9000 people have been killed so far in the 20-year-old conflict, and an aid-dependent Bangladesh is under increasing pressure from donors to mend its human rights record in the hill tracts.

Land is at the heart of the conflict in the Chittagong hills. Traditionally, the tribals communally owned large parts of the land and used it for jhum or shifting cultivation (hence the name Jumma, used collectively for Chakma and non-Chakma tribals of CHT). During British rule, ownership of their land was protected under the 1900 Chittagong Hill Tracts Manual, which prohibited the transfer of land to people from outside the hill tracts.

That changed in 1950 when the Pakistan government violated the Manual and settled several hundred Muslim families in CHT. But that turned out to be only the beginning. The origins of the present problem are nicely encapsulated in a report by the Chittagong Hill Tracts Commission, an independent international body, which states: "The late 1950s saw the beginning of a process of large-scale and systematic displacement of the Jumma people. The first major shock came with the construction of the Kaptai

Dam in the late 50s and early 60s, inundating 40 percent of the arable land and displacing more than 100,000 Jumma people. Subsequently, the (Bangladesh) Government Programme of population transfer to the CHT brought more than 400,000 landless Bengalis to the hill tracts between 1978 and 1985, many of whom now occupy the Jumma people's land. Finally, the various counter-insurgency resettlement programmes which were implemented since the late 1970s moved a large section of the population to 'strategic villages'."

For a lasting peace, questions of land rights for the tribals in the 5000 sq mile CHT, regional autonomy, eviction of the Bengali settlers, role of the army, and proper rehabilitation of those who have already gone back have to be sorted out. The degree of autonomy the PCJSS wants would require an amendment to the Bangladesh Constitution. The Bangladesh opposition, which at present is that of the Bangladesh Nationalist Party (BNP) led by Begum Khaleda Zia, has been quick to latch on to this issue. It has threatened to cripple the Government if troops are withdrawn from the hills or the Constitution amended.

No one knows what lies ahead. But there is a flicker of hope that the future will be brighter than these past few decades. Till then, the refugees have to cope with their camp life in India.

Indian Apathy

Among all the refugee groups in India, Chakmas are probably the worst off. Indian officials complain about the cost of looking after the Chakmas, but will not let Chakmas (or, for that matter, any other refugee group in the country other than the Afghans) avail of support from the United Nations High Commissioner for Refugees. Partly, this is due to the fact that India does not have a refugee policy. Each refugee group in the country is treated differently, depending on its strategic value or political clout. But while Sri Lankan Tamils camping in southern India can count on fellow Tamils to plead their cause with New Delhi and the Tibetans have their own Dalai Lama along with Hollywood stars pitching for them, the Chakmas, holed up in a remote, neglected part of India, have nobody. Since 1986, when the first batch of refugees from the Chittagong Hill Tracts arrived on Indian soil, the cash

dole has been an incredible 20 paisa per person per day. That adds up to six rupees a month-the lowest amount given to any refugee group in the country. This is much too little to survive on, so the Tripura relief commissioner turns a blind eye to Chakma refugees working quietly on the side as labourers in nearby paddy fields or at construction sites. No doubt, local Chakmas of Tripura resent the refugees for undercutting them in the job market, but as the landlords are happy, not much fuss is created.

The Indian government also provides rice and salt to the refugees along with some extra money to buy other food. But even this disbursement has not been without problems. Between 1992 and 1996, the Chakma refugees of Tripura received rice and salt only. It was not until the New Delhi-based South Asia Human Rights Documentation Centre reported the matter in 1994 that the Indian National Human Rights Commission took notice and the outstanding arrears finally paid in March this year.

The problem is that in a poor and overcrowded country like India, refugees have to jostle for scarce land and resources with other disadvantaged groups. Any mention of non-functioning tubewells in the refugee camps to officials in Agartala elicits a predictable riposte: "How many Indians have access to potable water?"

Down but Not Out

The harshness of exile has not killed the spirit of the people of Takumbari camp. When the first lot of Chakma refugees arrived in Tripura in 1986, 20 to 25 families were herded together in barrack-like bamboo constructions without partitions. Slowly, the refugees started building their own huts. Now, some have their own kitchen gardens as well.

"The first few months, the camp used to be filthy," says Gyanpriya Chakma, one of the first refugees to have enrolled as a health worker with Voluntary Health Association of Tripura (VHAT). "Disease was spreading, so we started a health centre here. As health workers, we started an awareness drive to make the camp clean. Refugee volunteers would demonstrate how each family should keep its environs clean. We went from house to house, singing songs about diarrhoea in the Chakma language. We

held corner meetings... you can see the results with your own eyes."

There is even an eight-bed mini-hospital in the camp that was constructed by the refugees out of their own limited resources a year ago. At the entrance to the hospital, the names of each refugee donor is written in bold letters. This facility has saved them a considerable amount of money since the trip to the nearest hospital alone costs more than 25 rupees. The government doctor who comes every day marvels at the enterprise of the refugees and the growing health awareness in the camp. A mark of success, today even locals visit the refugee hospital.

The hospital has a stock of drugs, a stethoscope, forceps, scissors for minor surgeries, tapes, gauze, blood pressure instrument, and its own delivery ward. "More than 20 refugee women have given birth here," says Chittaranjan Chakma, hospital in-charge. But life-saving drugs are in short supply. The Refugee Welfare Association collects money for the treatment of those who are in real need. "When we really need money, we ask each refugee to contribute a fistful of rice. We take out a collection and then we sell it in the market inside the camp," say Upendra Nath Chakma, president of the Refugee Welfare Association.

The hospital is not the only example of the indomitable spirit of the Chakmas refugees. They have been running their own schools in the camps, against all odds. (Till last year, refugee children were not permitted to appear in the Tripura state high school examinations.) The schools are a refreshing sight: teachers actually teaching, even if the classrooms are make-shift bamboo sheds and the blackboards cracked. There are no chairs and tables in the primary schools. Each child brings a piece of sack cloth to spread on the mud floor.

Most refugee children cannot afford to buy text books. Twenty-one-year-old Gitali Chakma had to give up her studies because there was not enough money. Her father was no more, and she had to take up a job as a refugee health worker with VHAT. Gitali says she is determined to continue her education when she goes back to her native village in the hill tracts. A similar determination can be felt in the women's committees of which there is one in each

camp. With talk of repatriation in the air, the committees are busy preparing their members. "Women don't have equal property rights in our community. So, when we talk about land rights, we have to mobilise women to demand an equal share of that," says Sakyabala Diwan, a committee member.

Driven out of Bangladesh, neglected by India, ignored by the world, the condition of the Chakmas in their refugee camps shows that refugees can rarely be happy in exile. But they can do a lot to make the present more bearable. And going by the collective will they have shown, they can even be an asset to the host community.

Refugees Within, Refugees Without

On 15 August 1947, the Indian tricolour went up a flagpost in Rangamati, the main town in the Chittagong Hill Tracts. The Chakma leaders had believed during the tortuous negotiations leading up to Partition that, given the religious composition of the largely Buddhist CHT, their district would be parcelled out to India.

Not so, decided Sir Cyril Radcliffe, head of the commission with the task of apportioning the territories, and the Hill Tracts were awarded to (East) Pakistan. On 18 August, Pakistani troops marched into Rangamati, pulled down the Indian flag, and sent up in its place the star and crescent of Pakistan.

The days of travail had begun for the Chakma, a minority which, over the following half century, has had more than its share of fragmentation, even by South Asian standards. Today, their own homeland, the CHT, is overrun with Bengali settlers from the overpopulated Bangladeshi mainland, and divided groups survive under trying circumstances in Tripura, Mizoram and Arunachal.

However, for all the tragedy they have suffered, the world knows too little about Chakmas. Within Bangladesh, they pale to insignificance before the size of the mainland population and the suffering that regularly visits it. In India, Chakmas make up three segregated groups whose problem is one among so many in the increasingly violent Northeast, itself a region that suffers neglect from India's rulers.

Colony to Bahini

The Chakma form part of the great Tibeto-Burman language family whose antecedents, like those of the tribal communities stretching all the way east from central Nepal, go back to the central and eastern Asia of thousands of years ago. The jungles of the CHT are home to several such Tibeto-Burman tribes, among whom Chakmas and Marmas are the largest.

The Hill Tracts, an undulating curiosity in a Bangladesh that is otherwise remarkable for its deltaic flatness, became a refuge for Buddhism even as the faith declined across the region in the face of a resurgent Hinduism and, later, Islam. The Buddhist character of what is today the CHT, in fact, seems to have been cemented in the 14th century when Sawngma (Chakma) Raja Marekyaja migrated from neighbouring Arakan hills into the Chittagong belt to establish his rule and dynasty here.

During colonial times, the Chakma did not take kindly to new demands for taxes by the British, who had to make at least three major offensives to subdue the tribals until an agreement was extracted from them. However, relations with the British became progressively cordial afterward, to the extent that Chakmas under Rani Kallendi sided with the imperial rulers during the Great Mutiny of 1857.

In 1860, the British divided the hill tracts into three subdivisions, under the control of three tribes. In 1900, in return perhaps for loyalty shown, they introduced a regulation banning the settlement of outsiders in the Hill Tracts and prohibiting the transfer of land to non-indigenous people. The 1935 Government of India Act defined the hills as a "Totally Excluded Area", taking it out of Bengal's control.

These actions to protect the tribal identity and economy were strongly resented in Dhaka and Calcutta. The displeasure found expression immediately after 1947 in the open season that was declared for settlers. Successive regimes in East Pakistan, and later Bangladesh, supported the influx of Bengali-speaking Muslim migrants into the 5,000 sq km Hill Tracts, which is sparsely populated in relation to the rest of the country. Today, as a result of the aggressive settlement policy, the Hill Tracts has a population

of 900,000 which is evenly divided between Muslim homesteaders and the indigenous Buddhists.

If the first political blow suffered by the Chakma was when their territory was placed with East Pakistan, the following decades saw successive measures that fuelled discontent. It started with the crackdown on the anti-Pakistan demonstrations of 1947. Then came the inundation of prime agricultural lands by the Kaptai Dam reservoir, one of the first mega-projects in all South Asia. The reservoir displaced tens of thousand Chakmas.

During the 1971 war for Bangladesh's liberation, the CHT population backed the Mukti Bahini against the Pakistani army. The following year, Manobendra Larma, who had been elected to the national parliament from the Hill Tracts, called on Sheikh Mujibur Rahman with a delegation, seeking to place Chakma concerns on the new nation's political agenda. As it became clear that Shiekh Mujibur and the new establishment he represented was in no mood to listen, Mr Larma set up the Jana Sanghata Samiti as a political group, and later, its armed wing, the Shanti Bahini.

Over the course of the following years, operations by the Bangladeshi army in the Hill Tracts against the Shanti Bahini led to an exodus of Chakma refugees into neighbouring Tripura, the Indian state which juts like a wedge into Bangladesh's east. Over the last 20 years, Indian security forces have supported the Chakma fighters and have provided training which is conducted for the most part in Tripura. During this period, the Bahini has carried out a series of attacks on Bangladeshi forces and on civilian targets as well.

There was a split in the Bahini in 1983 and a faction surrendered to the Dhaka authorities. However, the leftist group that is backed by India battles on. Manobendra Larma was killed during the factional infighting, but his brother, Shanto, has continued the campaign against Dhaka. The hills are presently quiet, as a ceasefire is in force while peace negotiations continue.

Fourfold Division

The number of Chakma who continue to live in their homeland of the Chittagong Hill Tracts is said to be about 300,000. Another

80,000 Chakmas are to be found concentrated in the southwest of Mizoram, the Indian state that is sandwiched between Burma and the CHT. Most of this population is now regarded as Indian, having lived in Mizoram for generations. A third group of most recent arrivals is located in Tripura, and numbers 50,000. Here since 1988, these Chakma refugees fled the Bangladesh Army operations against their villages in the CHT. Today, they live in decrepit settlements that are euphemistically termed refugee camps by the Indian government.

A fourth group of Chakma consists of those displaced by the Kaptai Dam reservoir in 1964, who were forced to fend for themselves when the erstwhile government of East Pakistan failed to pay compensation. About 30,000 of these Chakma "development refugees" ended up in the Cachar and Lushai hills (which later became the Mizo Hills, and then the state of Mizoram). At least 20,000 more left for the Arakan hills in Burma, where they are now settled.

"They came in a hopeless, pathetic condition, just with the clothes that they wore," recalls one senior Mizoram official, who was part of the Assam government team that received the Chakma in the Cachar and Lushai hills. At one point, the Indian authorities toyed with the idea of moving the Chakma en masse to the Andaman and Nicobar islands, but it was later decided to shift the refugees to the North East Frontier Agency, now the state of Arunachal Pradesh.

No Honour, Nor Dignity

The Chakma encampments in Tripura are not "refugee camps" as the United Nations High Commissioner for Refugees would define them. They have none of the facilities available to, say, the Bhutanese refugees in the Jhapa camps of Nepal. The Chakma huts are of mud and thatch, and for years they have received from the Government of India a measly daily quota of 400 grams of rice, some salt, and 20 paisa on the side.

Because this dole is hardly enough, many Chakmas work outside the camps for wages lower than what the locals ask. This has created tension, and recently, the Tripura state government passed an order restricting the refugees to the camps. This year,

for the first time since the Chakmas arrived in Tripura, refugee students were not allowed to sit for school-leaving examinations of the state education system.

Repatriation talks between the Bangladesh authorities, the Indian Government and the Chakma leadership have continued over the past few years, but there appears little hope that the refugees will be returning anytime soon with the "honour and dignity" that their leaders insist on. Assurances from the Bangladeshi authorities do not seem enough, and the Indian side does not favour forced repatriation. Conditions are far from settled, especially as the ceasefire between Dhaka and the Shanti Bahini is due to end on 31 March.

The Chakma of Mizoram, while they seem to be the most secure among the displaced groups, have problems of their own. Regarded as Congress party backers, they were granted an autonomous district council back in 1972. The local Mizo, who see a cultural and demographic threat in the Chakma presence (they now make up ten percent of Mizoram's population), resent the granting of the council, especially as it was done without consulting them. Besides, the Mizo also suspect that many of the state's Chakmas are subsequent migrants from Bangladesh, and not part of the original settlers.

The Mizo are predominantly Presbyterian and they recently celebrated 100 years of the coming of the Church to their hills. The growth of the Chakma population, whether natural or through illegal influx, has sparked a campaign of intimidation by the militant Mizo Students Union. Chakmas have been assaulted, their houses torched, and names struck off the electoral lists. The anti-Chakma campaign is set to resume this spring and continue through the summer. "The Chakma are foreigners, and they do not belong here," is the refrain among the Mizo student leaders.

Another 70,000 or so Chakmas are into hard times in nearby Arunachal Pradesh, where a student-led campaign is underway to drive out the Kaptai 'oustees' who were settled here by the Indian government 32 years ago. Here, too, a campaign to frighten them is on, which recently forced hundreds to flee to the relative safety of Assam. The Supreme Court of India has given directives

against the anti-Chakma drive, but Arunachali leaders and agitators insist that the campaign will continue. The Central government has appointed a committee to review the situation, but with both the state government and opposition agreed on the question, uncertain times loom ahead for the Chakma of Arunachal.

Demographic Threat

In their homeland of the Chittagong Hill Tracts as well as in their Northeast India exile, the Chakma are about as vulnerable as it is possible for any community to be. A tenuous peace prevails in the Hill Tracts themselves, and in the points of their diaspora in India—Tripura, Mizoram, and Arunachal—they face hostile locals and a rising threat of eviction. The politics of demography is all the rage in the Northeast, and the Chakma have no constituency. The New Delhi authorities may try to show understanding, but that is no match for the rising animosities on the ground. The fact that the Chakmas of the Northeast are fragmented into three different populations makes their voice that much weaker.]

If there were to be a common effort by New Delhi politicians and bureaucrats, the chief ministers and opposition leaders of the Northeast states, the Chakma leaders, and eminent members of the public, a humane solution that addresses the interests of longtime residents as well as the demographic concerns of the locals may be found.

Even in the unlikely event of the Chakma problem in the Northeast being resolved in a few swift strokes, however, the problem of Chakma in the Chittagong Hill Tracts would remain. That was, after all, how it all began.

Chakmas and Hajongs denied their Rightful Place

Thirty-seven years after they arrived in India from then-East Pakistan (now Bangladesh) – some displaced by the Kaptai hydroelectric project, others hounded out by the growing incidents of communal violence – the Chakmas and Hajongs in Arunachal Pradesh have yet to settle down and find a level of basic security. The highest court in India has upheld their right to citizenship and its attendant benefits. However, thanks to an obdurate State

Government and a lackadaisical Centre, the Chakma and Hajong communities remain stateless, disenfranchised and the target of attacks by xenophobic groups in the state.

Over the course of the past few years, the State Government of Arunachal Pradesh has denied the Chakmas and Hajongs access to the most basic infrastructure and opportunities. These conditions persist despite intervention on behalf of the communities by the National Human Rights Commission (NHRC), the Ministry of Home Affairs, the Rajya Sabha (upper house of Parliament) and clear judgements in their favour by the courts. Government inaction and inefficacy has left these communities vulnerable to threats and violence by organizations in the state such as the All Arunachal Pradesh Students Union (AAPSU).

On 9 January 1996, the Supreme Court of India, ruling in the case of *National Human Rights Commission vs State of Arunachal Pradesh and Anr*, directed the government of Arunachal Pradesh to ensure protection of the life and personal liberty of Chakmas resident in the state, and to process their applications for citizenship in accordance with law. The Supreme Court's judgement was followed by a positive decision by the Delhi High Court. In the case of *People's Union for Civil Liberties and Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh vs Election Commission of India and others*, the Delhi High Court ruled in favour of registering Chakmas and Hajongs as voters in Arunachal Pradesh. However, these court directives have been ignored.

Some historical background is necessary to understand the devastating nature of the present situation. The Chakmas of Arunachal Pradesh belong to a tribal group that has for centuries inhabited the Chittagong Hill Tracts (CHTs) of Bangladesh. Despite the fact that most of the inhabitants of the CHTs are either Buddhist or Hindu, the region became a part of Pakistan with the partition of India in 1947. In 1964, communal violence and the construction of the Kaptai hydroelectric dam displaced nearly 100,000 Chakmas. A large number of these displaced people sought refuge in India.

Nearly 1,000 members of the Hajong tribe, a Hindu group from the Mymensingh district of Bangladesh, were also settled in these areas. In the more than 30 years since their resettlement, the

Chakmas and Hajongs have built villages, developed the land granted to them and paid state taxes on their land. Additionally, they have become integrated into the social fabric of Arunachal Pradesh and established strong ties to the region. Many of these Chakmas and Hajongs, who now number about 65,000, were born in India and know no other home.

The Chakmas and Hajongs are legal residents of India. In 1964, the Government of India granted migration certificates into the country to approximately 35,000 Chakmas and 1,000 Hajongs. The migrants were settled by the Government of India in the erstwhile North East Frontier Agency, an area that comprises the present-day districts of Lohit, Changlang and Papumpare in Arunachal Pradesh. These certificates indicated legal entry into India and the willingness of the Government of India to accept the migrants as future citizens. Additionally, under the Indira-Mujib Agreement of 1972, it was determined that India and not Bangladesh would be responsible for all migrants who entered India before 25 March 1971.

Many Chakmas and Hajongs also have the right to citizenship and the right to vote. Under Section 3(1)(a) of the Indian Citizenship Act 1955, every person born in India on or after 26 January 1950 and before 1 July 1987 is a citizen of the country. There are about 35,000 Chakmas and Hajongs who were born in India after 1964. Under the Indian Citizenship Act, they are Indian citizens by birth and, consequently, eligible to vote. However, when the Chakmas and Hajongs who satisfy the Act's requirements tried to register in the electoral rolls, the concerned State Government officials refused to accept their applications.

The Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) approached the Ministry of Home Affairs to remedy the situation. The Ministry indicated that the Election Commission had been requested to include all legitimate Indian citizens in the rolls. The Election Commission took no action. The People's Union for Civil Liberties (PUCL) and the CCRCAP filed a writ petition before the Delhi High Court in this regard (CWP no. 886 of 2000). To date, not a single Chakma or Hajong has been included in the electoral rolls.

In response to the condition of the Chakmas and Hajongs, the NHRC filed a writ petition in the Supreme Court against the State of Arunachal Pradesh. The case arose in response to allegations of human rights abuses suffered by the Chakmas and Hajongs at the hands of the State Government of Arunachal Pradesh in collaboration with private entities like the AAPSU. In September and October of 1994 the CCRCAP made numerous appeals to the NHRC, alleging human rights abuses and imminent threats to the lives and property of the Chakmas and Hajongs.

Upon inquiry, the NHRC determined that the Arunachal State Government was acting in concert with the AAPSU to issue "quit notices" with a view to intimidating the Chakmas and Hajongs and expelling them from the State. Because of the State Government's delayed statements and lack of action in response to the inquiries and directions of the NHRC, the matter was brought before the Supreme Court. Despite the Supreme Court's clear ruling, the Chakmas and Hajongs still could not apply for citizenship within Arunachal Pradesh due to intimidation by the AAPSU, which has the support of the State Government. Consequently, on 18 February and 19 June 1997 the groups submitted citizenship applications directly to the Central Government. The Union Home Ministry forwarded these citizenship applications to the District Collectors for necessary verification.

For example, on 4 May 1998, 27 Chakmas submitted citizenship applications to the Deputy Commissioner of Changlang District. He refused to accept them. Perforce, the Chakmas and Hajongs had to submit applications directly to the Union Home Ministry once again. More than two years later, the Chakmas and Hajongs have yet to be granted citizenship.

Over four years after the Supreme Court judgement, the PUCL and CCRCAP challenged the government in court once again over its continued inaction. They filed a writ petition in the Delhi High Court against the Election Commission of India, the State Election Commission of Arunachal Pradesh, and the Union of India.

During the course of the case, the Central Government stated: "The Central Government is of the view that persons settled in Arunachal Pradesh after their migration in 1964 but before the 1986 Amendment to the Act should be citizens of India."

The Delhi High Court directed the Election Commission of India and the State Election Commission to process Chakma and Hajong applications for inclusion in the electoral rolls. The directive is yet to be implemented.

The Central Government has also often asserted that the Chakmas and Hajongs have a legitimate claim to Indian citizenship. As a member of the Opposition, the current Minister of Home Affairs, L K Advani was exceptionally critical of government ineffectiveness in granting citizenship and related rights and privileges to the Chakmas and Hajongs. He raised the issue in Parliament on several occasions. During his own tenure as Minister of Home Affairs, however, he has failed to make the Arunachal Pradesh government comply with constitutionally binding judicial orders and directives from the Ministry of Home Affairs.

The Government of Arunachal Pradesh has systematically denied the Chakmas and Hajongs access to social, economic and political rights to which they are entitled under Indian and international law. It has conducted a three-pronged strategy of discrimination against them – denying them political rights, economic opportunity and access to basic social infrastructure. Additionally, the State Government has not checked the intimidation and threats issued by the AAPSU. In fact, on occasion it has openly supported AAPSU activities. The Chakmas have been suffering forcible eviction at the hands of the State Government for decades – one particular village in the district of Changlang, Vijoypur, was reportedly destroyed on three occasions, in 1989, 1994 and 1995.

In 1980, the State Government banned the employment of Chakmas and Hajongs. It has stopped issuing trade licenses to members of either community. Furthermore, all trade licenses issued to the Chakmas in the late 1960s were seized in 1994. Their employment options are thus effectively sealed off, and the Chakmas and Hajongs are locked into a vicious cycle of poverty. The situation has been exacerbated by AAPSU-organised economic blockades of the Chakma and Hajong refugee camps.

The State Government has steadily dismantled basic social infrastructure in Chakma and Hajong settlements, rendering these

people ever more vulnerable. All persons legally resident in India are entitled to ration cards if their income falls below a specified amount. In October 1991, the State Government discontinued issuance of ration cards to Chakmas and Hajongs, many of whom live in extreme poverty. In September 1994 the State Government began a campaign of school closing, burning and relocations that have effectively denied the Chakmas and Hajongs their right to education. Schools built by the Chakmas using local community resources were closed down or destroyed. Also, health facilities in Chakma and Hajong areas are all but nonexistent.

The Chakmas and Hajongs of Arunachal Pradesh have a verdict in their favour from the apex court and the Delhi High Court, the support of the Rajya Sabha and, ostensibly, bureaucratic compliance from the Central Government. The Arunachal Pradesh government, the Election Commission of India and the State Election Commission of Arunachal Pradesh must now implement the directives of the Supreme Court and the Delhi High Court to ensure that the Chakmas and Hajongs receive their full rights of citizenship.

Refugees within Refugees

REFUGEES WITHIN AND REFUGEES WITHOUT

A comprehensive attempt focusing on the various facets of movements in the subcontinent is picturesquely presented in this collection, which merited publication due to the successful discussions that took place in a two-day conference organized by the Institute of Peace and Conflict Studies (IPCS). The book traverses in great detail the reasons for the generation of forced movements in South Asia: break down of colonial rule leading to adverse repercussions; problems of nation and state building resulted in political, ethnic, religious and economic oppression; and, political and economic development in the neighbouring regions as a ?pull factor.? However it is important to note that, for reasons such as: physical proximity, ethnic linkages, cultural and linguistic linkages, the exodus of refugees have been absorbed within the region itself.

This interesting phenomenon fetches many questions as to how will the South Asian states deal with the refugees or forms of displacement in the absence of any national legislation in this regard. Also the question of credible accommodation springs out, because none of these states have signed any of the international conventions or treaties regarding refugees. The question of security threat posed by the refugees in terms of resources, economy and environment and how effectively can the states manage these threats are discussed. The book covers the major population displacements in South Asia such as Bhutanese, Burmese, Bangladeshi migrants, Bihari Muslims and Sri Lanka; the threat posed by them to the country of asylum and the role of governmental, non-governmental and inter-governmental

organisations in protecting the refugees. PR Chari in the introductory chapter 'Refugees, Migrants and Internally Displaced Persons in South Asia: An Overview' briefly reviews the twelve important population movements in the region since the partition of the subcontinent in 1947. His elaboration on the security dimensions of population displacement in South Asia such as *disruption of the domestic policy of the host state, linkage with the criminal groups and possible frictions between the country of origin and asylum* is informative. His view on adopting a holistic approach to this issue by securing the cooperation of international and regional organisations is not fruitful especially with regard to SAARC. His suggestion for regulating a body of law for the rights of the refugees is commendable though the policy makers would not formulate it.

As a continuum to the discussion of security aspects, Suba Chandran in his article 'Refugees in South Asia: Security Threat or a Security Tool?' analyses in a lucid manner whether these uprooted persons are really a security threat. But he does not furnish inputs as to how they are made as security tools by the states in order to achieve their political gains. Hadn't the Sri Lankan government granted sizeable refugees citizenship, just to prevent Indian intervention in the island? Hadn't the intervention of India in East Pakistan to liberate Bangladesh in the pretext of exodus of refugees in the country call for a security tool? However his sizing of the threat perception based on three considerations vis-a-vis *Social security* in terms of drug addiction, trafficking and smuggling; *Economic security* in terms of providing food, shelter and other aids and *Political security* in terms of local integration and criticism of political opponents, has certainly added to the value of this collection.

Why should we bother about the security threats? Is there any real threat posed by the refugees and IDPs to a state? How can a solution be attained to solve these problems?

V. Suryanarayanan in his *chef d'oeuvre* article on 'Humanitarian concerns and Security Needs: Sri Lankan Refugees in Tamil Nadu' argues for a National Refugee Law to be formulated by the South Asian states. He strictly asserts for a bilateral perspective between India and Sri Lanka. If the situation in the country of origin gets

normalised then the refugees have to return to their homeland, which is true when substantial number of refugees return through voluntary repatriation. Initially the author categorizes the Sri Lankan Tamils in India into four divisions refugees in camps, outside the camps, Sri Lankan nationals and Tamil militants in the camp and he traces the flow of refugees to India as a result of ethnic strife in Sri Lanka.

Refugees in their own land? is construed by Renuka Senanayake in her article on Managing the Internally Displaced in Sri Lanka. She examines the management of IDPs in Sri Lanka by the state and other key actors for protection and providing facilities for their return, resettlement and reintegration. The authors cogitation that the situation got aggravated only when the Sinhalese soldiers were killed by LTTE needs to be investigated further. Her hopes for a durable solution that would address the problem of infrastructure development and adopting policies in relation to IDPs and following the internationally accepted rules of war is a positive astuteness.

Wasbir Hussain recapitulates the Bangladeshi Migrants in India in his paper on 'Bangladeshi Migrants in India: Towards a Practical Solution? A view from the Northeastern Frontier. The demographic complexion in Assam and Tripura has changed drastically due to the trans-border migration. This had aroused serious emotional uprisings among the indigenous Assamese and Tripura people leading to violence. The authors support to Sanjoy Hazarika's view of work permits or job cards to Bangladeshi's has to be considered. His illustration of Indian governments determination to erect fencing along the 3200 km long border to prevent the influx of Bangladesh migrants is informative, though this movement cannot be stopped. The conditional assimilation policy, which the author hopes would reduce the growing conflicts.

No love relationship can exist between the stateless Rohingyas and the state of Burma. Put differently, the relationship between the two represents coercion rather than consent is portrayed by CR Abrar in his paper 'Still Waiting for a Better Tomorrow: A Decade of Burmese Refugees in Bangladesh?'. In the case of the Rohingyas, it is even more pathetic for their refuge across the border brought no change to their sufferings. Unwinding the decade long problem,

the author discusses the role of UNHCR and other NGOs to bring back the normalcy. However the author fails to expose the smuggling of small arms and other exotic weapons, leave alone narcotics, due to the nexus between the Rohingyas and militants. Indeed nothing can be more ominous than the growth of a nexus between arms, drugs and frustrated groups. What is there to look for a better morrow then?

Leave alone Rohingyas, there are Bihari Muslims in Bangladesh where these excluded groups are to be ?repatriated? says Zarin Ahmed in her article on ?The Bihari Muslims of Bangladesh: In a State of Statelessness.? Pakistan was opposed to accepting the Biharis because they would disturb the already flammable ethnic balance in the province of Sind. The author suggests for joint Pakistan-Bangladesh talks and the need for a Model National Law on Refugees which would bring good life to these *stranded Pakistanis*. But the author fails to understand the fact that sizable numbers within the stateless population would actually prefer to remain stateless than be given a nationality not to their preference. The Bihari leaders encourage their followers to remain in Dhaka camps rather than seek reintegration with Bangladesh. The author portrays as though the Pakistanis are against the Biharis but that is not fully true. Pakistan views itself as having a humanitarian if not legal responsibility towards the Biharis. Demands by Pakistan's internal constituency pressing for Bihari repatriation, particularly MQM party, in part shapes Pakistan's continued engagement in the matter.

The regions of Nepal, Bhutan and North-East India are becoming ?*melting point of ethnicity*? says Tapan Kumar Bose in his article on ?Bhutan: Creating Statelessness-A recipe for Regional instability. The Bhutanese refugee problem needs to be understood more as a case of ethnic cleansing and the creation of statelessness than as a refugee issue. If this is not going to be solved, the author cautions, there will be a possibility for armed insurgencies. In the Bhutanese case, the expulsion of the Nepalis was in part prompted-the governments concern that the Indian government could use Nepali agitation and potential population growth to annex Bhutan as it did it with Sikkim. All these indicate that the world is in turmoil and needs immediate humanitarian action. DR Karthikeyan in his paper ?Resolving the Refugee Problem: A Role for Human

Rights Organisation? argues for the commendable efforts of human rights organisations to resolve the refugee problem. He argues that even in the absence of specific legislation, refugees are entitled to enjoy basic human rights protection. The role of the Judiciary and the NHRC in India has provided some hope for the refugees with regards to human rights protection. But the author fails to accept that what we have is a representation of a dialectic in the constitution of the state, that is state as usurper and state as salvation, without of course realizing that the former cancels the latter and vice versa. The NHRC is just a recommendatory body and cannot force the state to comply with humanitarian aspects when its security interests are at stake.

Following the same tone, T. Ananthachari argues for a National Refugee Law in his contribution *Towards a National Refugee Law in India.*? It is worthwhile to examine the manner in which refugees have been handled so far in India. Given the security situation prevailing in the country, refugee problem has come to be viewed in the light of national security considerations rather than in the light of its underlying humanitarian aspects. Therefore it is imperative to formulate refugee laws that would cope up satisfactorily with the enormous refugee problems besetting the country. It is to be noted that the National Human Rights Commission is involved in the preparation of Draft Refugee Law.

Finally, the role of UNHCR in South Asia is dealt by Sumbul Rizvi in her paper *Managing Refugees: The Role of UNHCR in South Asia*. According to the author, forced migration in South Asia is a growing phenomenon emerging from political reasons, economic expediency and environmental degradation. The UNHCR's first intervention in the Indian Subcontinent was during the Bangladesh refugee crisis, wherein the organization acted as the focal point for coordinating UN and other international humanitarian assistance. UNHCR has to be given high credits for its effective role in dealing with the Bhutanese refugees, Afghan refugees, Rohingya refugees, Sri Lankan IDPs in Sri Lanka, and Bangladesh refugees. Though Sri Lankan refugees and Tibetan refugees are taken care of by the Indian government, UNHCR facilitates by procedural formalities for repatriation. To this end, UNHCR conducts eligibility determination interviews and issues

refugee certificates to those who qualify as refugees. The editors contend that refugee-generating situations in South Asia, instead of being resolved have persisted and even intensified over the last few years. Bilateral negotiations have not always been successful and drastic intervention strategies are seldom adopted with return of refugees as the only agenda. Throughout the book one can notice the suggestions and clear analysis on the part of the authors in explaining the hard realities of the refugees, IDPs, stateless and economic migrants in South Asia. *But does this constitute refugees in all of South Asia?* This compilation appears to be a piecemeal of few but major refugee movements in South Asia. What about Afghan and Tibetan refugees who constitute a major portion of population movements in India and Pakistan. The editorial team should also have attempted to address the movement of Chin refugees, Chakma refugees and Rhea refugees. This would have made the volume encyclopedic and rendered it a far-reaching document on population movements in South Asia.

REFUGEES AND THE REPUBLIC

At a meeting in Chennai that I recently attended, an official of the United Nations High Commission for Refugees, herself a Swiss national, remarked that "the Indian Government has a very humane attitude towards refugees". She was not merely showing courtesy towards her hosts. For, as another speaker at the symposium pointed out, in its 60-year-career the Republic of India has given refuge to some 25 million people fleeing persecution in their own homelands.

Listening to these presentations, I made a list of major refugee movements into India after January 26th, 1950. This doubtless incomplete listing goes as follows:

In the early 1950s, more than a million Hindus fled East Pakistan, seeking shelter chiefly in the state of West Bengal;

In the late 1950s, Tibetan Buddhists began crossing over into the Indian part of the Himalaya. Most settled near Dharamsala and Mussoorie, but several thousand made their home as far south as Karnataka;

In the early 1960s, following major Hindu-Muslim riots in East Pakistan, there was a fresh flow of refugees into eastern India;

From the mid 1960s, a steady trickle of Garo and Chakma tribals began coming into northeast India from East Pakistan;

In the early 1970s, Hindus and Muslims, numbering some nine million in all, came across the border, being placed in temporary shelters across West Bengal, and parts of Tripura and Assam as well;

In the early 1980s, very many Sri Lankan Tamils crossed the Palk Strait into Tamil Nadu;

From the late 1980s, many Burmese nationals began seeking asylum in India.

What is striking about these successive waves is that the migrants were all fleeing majoritarian or authoritarian policies in their own countries. The Bengali Hindus were the victims of an Islamic Pakistan; the Tibetan Buddhists of a cruel Communist regime; the Sri Lankan Tamils of Sinhala chauvinism; the Burmese of a military dictatorship. The refugees of 1971 were fleeing both the Punjabi chauvinism of the Pakistani elite and the brutality of the Pakistani army. For all these people, the Republic of India felt somehow safer than the country of which they were citizens. (In addition to these victims of persecution, India has also provided a home to large numbers of Hindus from Nepal and Muslims from Bangladesh who have come as economic migrants.)

During the Partition riots of 1946-47, millions of Muslim refugees left India for Pakistan, even as millions of Hindus and Sikhs came into it. However, after the establishment of our republic in 1950, the movement has been strictly one way. While India has welcomed in refugees from Pakistan, China, Bangladesh, Burma and Sri Lanka, there are no Indian refugees in those countries. As that UN official pointed out, our tradition of hospitality to victims of discrimination brings credit to India and Indians.

A poor, divided and still imperfectly united country has provided refuge and dignity to tens of millions of aliens. This has been the handiwork of both State and citizen; for, while public policies have welcomed refugees in, the *aam admi* has provided space and succour to them. Overall, our record in this regard compares very favourably to that of the richer and older nations of Europe and North America.

Indians should be more aware, and perhaps more proud, of this tradition than they currently are. But the self-congratulation should not be excessive. For, even as we have welcomed in some 25 million refugees since 1950, in the same period we — that is to say, the people and government of India — have displaced roughly the same number of our own fellow citizens from their lands and villages.

There have been two major groups of 'internal refugees' in independent India; the victims of development projects, and the victims of social strife. Since 1950, perhaps as many as 20 million Indians have been ousted from their homes by new hydroelectric projects, mines, factories, roads, colleges and universities, and townships. Those displaced have come disproportionately from the class of small peasants, whereas the schemes they have had to make way for have benefited the urban middle and upper classes, as well as farmers with large landholdings.

In the early years of Independence, there was little protest at this displacement. Tribals and peasants who surrendered their lands to development schemes were persuaded that this was in the larger 'national interest'. From the 1970s, however, social activists began to mobilize against forced displacement, on the legitimate grounds that those ousted by dams and factories were paid inadequate compensation, and were not provided any stake in these projects. Large dams were often the target; as with the protests against the Koel-Karo, Tehri and Narmada dams, which were important precursors to the more recent struggles against forcible land acquisition in Singur, Nandigram and Niyamgiri. There is one important difference, however; whereas the earlier protests were aimed at public-sector companies, these new movements of resistance have, as their twin targets, the State and the private corporations that its land acquisition policies seek to benefit.

Since 1950, some five million Indians have also been rendered homeless by sectarian or civil violence. After the bloodshed of Partition, Hindu-Muslim animosity was somewhat stilled by the shock and popular revulsion at the murder of Mahatma Gandhi. However, there were episodic riots in the 1960s and 1970s, and then — as a direct consequence of the *sangh parivar's* Ayodhya

movement — a more-or-less continuous stream of rioting between 1989 and 1993. The destruction of the Babri Masjid led to another lull, broken a decade later when Gujarat witnessed a horrific pogrom against Muslims. For the most part, the main offenders in religious riots have been radical or extremist Hindus; the main sufferers, poor and vulnerable Muslims. There have been two major exceptions; the pogrom against the Sikhs in Delhi and some other northern cities in 1984, and the forced expulsion of Pandits from the Kashmir Valley by Islamic fundamentalists in 1989-90.

Other Indians have been displaced as a consequence of conflicts between the State and those who seek to challenge or overthrow it. The Naga and Mizo insurgencies, and the response of the Indian army to them, led to very many innocent villagers being killed or rendered homeless. More recently, the Maoist insurrection, and the State's response to it, has also caused hundreds of thousands of Indians to abandon their homes to save their lives.

Religious violence and armed insurrection may have arisen independently of State action, but the policies — and practices — of the government of India have often contributed to their escalation. Because the homeless are abandoned by the State but provided succour by religious groups, there is a polarization of sectarian sentiment. Because the perpetrators of riots are never punished, there are always provocateurs available to start new (and more deadly) conflagrations.

There is an old line about India that some people are never tired of repeating — that of what can be truthfully said about this country the opposite is also true. A more evocative version of this aphorism, attributed to Jawaharlal Nehru, runs as follows: "India is home to all that is truly noble as well as truly disgusting in the human experience." So it is with our refugee policy; honourable and admirable when it comes to treating victims of persecution from other lands, shameful and shocking with regard to the refugees created by economic and political developments within India.

Chakma Refugees in India

Since 2001, the United Nations High Commissioner for Refugees (UNHCR) has marked World Refugee Day on June 20

to draw attention to the plight of all those forced to leave home. According to the UN refugee agency, there are 42.5 million refugees in the world. The Chakmas of Arunachal Pradesh make up only a tiny percentage of that figure — which is perhaps the reason why their story is forgotten.

According to the East-West Center Washington, about 100,000 Chakmas, a tribal group from the Chittagong Hill Tracts of Bangladesh, fled erstwhile East Pakistan between 1964 and 1969 for two reasons — communal violence and displacement.

A minority Buddhist tribe, they faced oppression on grounds of religion and ethnicity at the hands of the East Pakistan government. (Religious and ethnic persecution of tribal groups in the Chittagong Hill Tracts continues to this day.) Secondly, the construction of the Kaptai hydroelectric dam rendered many thousands of Chakmas landless.

As a result, 35,000 Chakmas migrated to Arunachal Pradesh that borders China and Myanmar. Hemantolal Chakma's family was among those who left in search of refuge. The 48-year-old farmer from Diyun was a toddler when he undertook the arduous journey.

"I don't remember anything from those days. But my mother and father told me that it was very tough. Our land had submerged under water because of the dam. We were stranded without any possessions and had to leave. We entered India through Mizoram and settled here in Arunachal Pradesh. I hear it was very difficult in those days. No food to eat, no shelter," he says.

Hemantolal lives with his wife in a thatched hut. There's no furniture in their dimly-lit home. One corner of their single-room hut functions as a kitchen and another as sleeping area. "This is how a poor person's house looks," he apologizes.

Although he's lived most of his life within these four walls, Hemantolal doesn't feel at home here. "It's a sorry state of affairs. I don't have any rights in this place. I can't vote, I can't call myself a citizen," he explains.

Like Hemantolal, most Chakmas in Arunachal Pradesh have been denied Indian citizenship or refugee status despite having migrated legally, with valid migration certificates issued by the

government of India. Moreover, after signing an agreement with Bangladesh in 1972, the government of India accepted all responsibility for the Chakmas who migrated before March 1971.

Twenty years later, the central government declared that the Chakmas have a legitimate claim to Indian citizenship. However, in April 2004, the state government granted voting rights only to 1,500 Chakmas, leaving 50-60,000 of them still stranded.

Apart from the lack of legal rights, the Chakmas also face discrimination on a daily basis. Sanjay Chakma, 35, who was born in India, regrets belonging to his tribe. "Sometimes I am sad that I was born a Chakma. I wonder why I am one. The other tribes in the region view us with such disdain. We are humans too, but we are denied the rights of humans," he says.

Sanjay says that many of his friends and acquaintances have been assaulted in broad daylight by members of other tribes. "You will hear cases of Chakmas being beaten up in public places. There is an image of Chakmas being criminals, doing wrong things. There's not always an element of truth in it. We don't get respect at work place. We have no other option but to endure how we are treated," he says.

The South Asia Human Rights Documentation Centre (SAHRDC) has not only accused the state government of Arunachal Pradesh of human rights abuses against the Chakmas but also of denying educational and employment opportunities to them.

"In September 1994 the Government began a campaign of school closings, burnings, and relocations which has effectively denied the Chakmas their right to education under international law," the SAHRDC says. Even today, studies point out that schools in Chakma-dominated areas have an abysmal student-teacher ratio of 300:1. Sanjay lives with his wife and three kids. Five-month-old Joshua is Sanjay's youngest son. It's a lazy afternoon and Joshua is crawling on the floor. Sanjay points to him worriedly and says he isn't sure of what his son's future has in store. "I haven't been able to get a birth certificate for him. The authorities make it very difficult to legally register newborn Chakmas," he says.

Sanjay claims to have made repeated rounds to the local registration office in Diyun district to acquire a birth certificate for

Joshua. "There are two days in the week to register for birth certificates. Every time I went to the office on these days, they would send me back and ask me to return again. After many attempts, I got tired of it," he says.

Sanjay thinks it is a deliberate attempt by the state government to deny the Chakmas an identity. "Most of us have no proof that we exist. Isn't it easy to erase records that never existed?" he says, adding, "I'm surprised you know about us. Nobody has bothered to find out."

Members belonging to other tribes in the region accuse Chakmas of criminal activities. Shivumso Chikro, who belongs to the Mishmi tribe, is an assistant professor of history at a college in the state's capital of Itanagar. He believes that the Chakmas should have legal rights but also expresses his apprehensions.

"The Chakmas are involved in a lot of criminal activities. They have expanded their territories. They have taken over land that belongs to other tribes and inhabited them. They should live in the land that has been allotted to them and not take over other people's land," Shivumso says.

He goes on to cite a close encounter: "Where my grandmother lives, there are also some Chakmas residing. One night she got looted by some Chakma miscreants who took away her traditional silver jewelry and everything she had. How do you justify that?" he asks, agitated.

The state government of Arunachal Pradesh seems to share Shivumso's fears. An academic paper published in 1996 says: "The government officially notes the Chakmas' 'propensity towards crimes and other anti-social activities.'

The Chakmas are still hopeful of a better future. Two years ago, a parliamentary committee set up by the Indian government vowed to look into their citizenship issue. Bimal Kanthi Chakma, an executive member of the Committee for Citizenship Rights of Chakmas of Arunachal Pradesh (CCRCAP), says they are now in negotiations with the state and central governments.

"I hope that the dialogue will be fruitful. Right now only a very few of us have voting rights. But this right has to cover many more people. We are also fighting to have the right to contest

elections here," Bimal Kanthi says. He refrains from sharing more thoughts on the issue, fearing it will affect the outcome of the negotiations.

On being asked by Al Jazeera what progress had been made on the Chakma citizenship issue in the past 60 years, the state government gave no comments. It therefore remains unclear when the negotiations will have an outcome that will decide the fate of thousands of Chakmas.

As part of its World Refugee Day project, the UNHCR is running a campaign titled "No one chooses to be a refugee". The Chakmas in Arunachal Pradesh know little about the campaign, but there's no doubt that it matches their sentiment.

Citizenship likely to Chakma, Hajong refugees

A major breakthrough has been achieved on the fate of the Chakma and Hajong refugees staying in Arunachal Pradesh as a high power committee today decided that those who came to India between 1964 to 1969 can be granted Indian citizenship.

Joint Secretary (North East) of the Ministry of Home Affairs (MHA), Sambhu Singh told *The Assam Tribune* after the meeting in Itanagar this evening that the issue has been creating controversy for years and a major breakthrough was achieved in the meeting today.

Singh said that the Government of India formed the committee to look into the issues pertaining to the citizenship issue of Chakma and Hajong refugees in 2010. Representatives from the Government of India and Government of Arunachal Pradesh as well as All Arunachal Pradesh Students' Union (AAPSU) and Citizenship Demand Committee for Chakma and Hajong refugees are members of the committee.

After a series of meetings, the Committee today arrived at a consensus that the Chakma and Hajong refugees, who came to India between 1964 and 1969 can be accepted as Indian citizens. Singh expressed the view that the agreement reached today could not have been any better.

The MHA official said that a joint committee of the AAPSU and the Citizenship Demand Committee of the Chakma and Hajong

refugees would carry out a survey to identify those who came to India between 1964 to 1969 and submit its report by the end of February this year. The report would then be sent to the Government of India for its approval.

Singh appreciated the humanitarian and positive approach of the AAPSU for a permanent solution of the vexed problem. He also said that in today's meeting, several members of the committee expressed deep concern on the "criminalization" among the refugees and called for measures to deal with the problem so that peace and tranquility in Arunachal Pradesh is not disturbed.

The MHA official further revealed that according to information available with the Government of India, the total population of the Chakma and Hajong refugees in Arunachal Pradesh is around 53,000. However, a number of them came to India after 1969.

The Chakma refugees started coming to India in 1964 from the Chittagong Hill Tracts area of Bangladesh following alleged harassment in the neighbouring country and they have been living in Arunachal Pradesh as "stateless citizens" since then. The issue created major controversy in Arunachal Pradesh and different organizations of the State including the AAPSU have been demanding that the refugees should be driven out of the State.

However, unable to take a decision on the fate of the refugees on its own, the Centre formed a committee to decide the fate of the refugees in 2010 and after series of talks, the committee today finally arrived at a decision in this regard. However, the fate of the Chakma refugees who came to India after 1969 is yet to be decided.

Chakma Refugees Pushed Back from Mizoram, India

On 25th January 1986, an Indian Army Brigadier, a Major, a Captain with the Deputy Commissioner of Lunglei, along with a Superintendent of Police came to the refugee camp at Tagolok Bak, Mizoram, India. There were over 300 Army, BSF (Border Security Force), CRP (Central Reserve Police) and MRP (Mizo Ram Police) in strength and many Mizos who were present there. The Indian Army Brigadier held a meeting with the leaders of the Chakma refugees at the refugee camp. At first the Indian Army Brigadier

made a speech in Hindi language which the Chakma refugee leaders could not understand. Then the Captain interpreted his speech in the Bengali language as follows: "You know that in the last SAARC conference held in Dhaka, there was a talk between Prime Minister Rajiv Gandhi and Bangladesh President Ershad about your repatriation. On the basis of their talks, you will be handed over to the Bangladesh Army on 29th January, 1986 and you will have to go. You should not feel sorry for this. Rather should you be grateful to India for giving you shelter, security and ration for the last 19 months." After his speech the Chakma refugee leaders became panicky and prayed for permission to talk with the Indian Brigadier about their problems. But the Brigadier outrightly said: "You have not the right to speak a word".

Then after the Brigadier's speech, the Deputy Commissioner of Lunglei on behalf of the Mizoram government spoke to the refugee leaders in broken Bengali in this manner: "You are shameless. Don't you know that this is Mizoram, this is not your country. You can't stay here. You should be ashamed of yourself. Do you know what is the meaning of push back? You are going to be pushed back by any means".

Then refugee leaders tried to explain that they did not come here to stay. They would return to their homeland if their demands were fulfilled by Bangladesh. At that moment the Deputy Commissioner threateningly shouted and ordered the refugee leaders to go out.

After the Brigadier left the refugee camps, curfew orders were announced through loudspeakers throughout the refugee camps for indefinite period and no one was allowed to come out of the camps.

On the 29th January, 1986 during the early hours of the morning, before the Sunrise, all the refugee camps were surrounded and the refugees were bodily searched by the MRPs and the CRPs. At 7 or 8 o'clock in the morning the BDR (Bangladesh Rifles) party arrived in a motor launch on the western side of Tagolok Bak across the Karnafully river and took up positions at a nearby garden. Then another motor launch slowly proceeded towards the refugee camps' wharf. The Mizo Police Superintendent gave order to the refugees to remain in the camps and not to come till further

instructions. The MRPs have already rounded up the refugee camps. Then the first batch of 51 families of Chakma refugees were gathered from the camps and taken to school premises from where they were being taken towards the BDR motor launch. But the refugees realising their fate, started shouting loudly: "We don't want to be handed over to the BDR, we are afraid of them. They will kill us!". At this moment, the MRPs swooped down upon refugees, young and old, men, women and children were all beaten up indiscriminately and force was used to make them board the BDR motor launch.

The refugee men tried to save their women and children from beatings by the MRPs, But the MRP became more furious and indiscriminate beating continued with more ferocity. As the refugees were crying for help to save them from the MRPs, refugees from other camps went to their rescue, They tried to make the MRPs understand and not to be so cruel. But the MRPs including the CRPs giving a deaf ear to their appeal, fell upon these helpless refugees just like tigers. The Mizo SP (Superintendent of Police), through a loudspeaker, gave order to shoot the refugees, and the Mizos who were also present with their catapults with marbles, threw stones at these pitiful refugees. The refugees became panicky at this hostile treatment by the Mizo people, MRPs and CRPs. They tried to run away for life. But by that time all the refugee camps were rounded up by the Indian Army and BSF personnel. They caught the fleeing refugees and handed them over one by one to the cruel hands of the MRPs and CRPs. The MRPs and CRPs tied the refugees on the necks and waists with ropes and pulled them as if they were not human beings and then handed them over to the BDR who received them with such happiness that while counting them in the motor launch they picked each one for each number.

While these refugees were being taken to an unknown place in Barkal area, they were subjected to physical tortures, young girls and women were raped. The BDR personnel picked the refugees left and right when they were disembarked from the motor launch. The plight of these Chakma refugees seems to be precarious as the Bangladesh Governments policy of extermination of the tribal people continues unabated.

Legal Framework, Law Enforcement And Security

There are numerous aspects pertaining to refugees which are of major importance both to India, as a country and to the refugees, particularly in the context of law enforcement. Given the security scenario prevailing in the country, particularly arising out of the role of some of the neighbours in this regard, an utterly humanitarian matter like the 'refugees' has come to be influenced by considerations of national security. It is a reality that we can ill-afford to overlook this aspect of the matter in any dispassionate deliberation of the subject under review in this article. While law and order is a State subject under the Indian Constitution, international relations and international borders are under the exclusive purview of the Union government. This has resulted in a variety of agencies, both of the Central as well as the State governments, having to deal with refugee matters connected with law enforcement. Also, all policies governing refugees are laid down by the Union government though the impact of the refugee problem as such has to be borne by the State administration to a greater degree if not wholly.

Security personnel at the international borders, immigration personnel at the land check posts, international airports and seaports, besides a host of state police personnel, are all intimately connected with law enforcement affecting refugees one way or another. As the very term 'security' denotes, all the above categories of personnel are entrusted with the onerous responsibility of ensuring national as well as internal security of the country as their first and foremost charge. They have to make sure that the laws of the land are enforced in regard to refugees without in any way ignoring or neutralising security considerations. But, at the same time, it is also their responsibility that the humanitarian overtones so characteristically and inseparably associated with refugees in general, are not lost sight of. It is also well known that every single situation pertaining to 'refugees' is replete with human rights aspects as well. It is obvious that these have also necessarily to be taken due care of by law enforcement personnel.

A proper understanding of the circumstances pertaining to specific refugee situations by the concerned law enforcement agency or even by an individual official, would pave the way for

taking care of both the security as well as the humane aspects-from both the humanitarian as well as the human rights angle. At the same time, knowledge on the part of all those who handle refugees-whether they are part of the government machinery or outside it (including international agencies, NGOs etc.) of the laws of the land and also how the security and enforcement personnel function, would considerably facilitate looking after the refugees.

Refugee-A Creature Of Circumstances

It should be appreciated that a person becomes a refugee because of circumstances which are beyond that person's control, often poignant. He/She is left with no other option but to flee from human rights violations, socio-economic and political insecurity, generalised violence, civil war or ethnic strife all these leading to fear of persecution. The import of this observation would be evident when one looks at the definition of a 'refugee'. The term 'Refugee' has a particular meaning in international law and its legal definition is laid down in the United Nations 1951 Convention relating to the Status of Refugees (to be referred to as "1951 Convention") and its 1967 Protocol. Article 1 para. 2 of the 1951 Convention defines the 'refugee' as "A person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.". Therefore, the need to give due importance to humanitarian and human rights aspects in dealing with refugees cannot be overstressed.

Thus, it may be noted that there are well-defined and specific grounds, which have to be satisfied before a person can qualify to be a 'refugee'. These grounds are *well-founded on fear of persecution* and considerations of a number of factors which may operate individually or collectively.

Distinction Between Refugees And Other Foreigners

While all persons who are not Indian citizens are 'Foreigners' including refugees, it is necessary to clearly distinguish the latter from other categories of 'foreigners'. There are considerable misgivings in the minds of many in India because of the failure

to clearly understand the difference between 'refugees' and various 'other categories of foreigners'. The consequence of this misunderstanding, particularly because of the large number of 'illegal immigrants' from Bangladesh who have spread into different parts of India, has tended to adversely influence the thinking of many in the country about the basic issues involved in the problem of 'refugees'. Unless the distinction between the 'refugees' on the one hand and all other categories of 'foreigners' on the other, is clearly brought home, our attempts to sensitise people in the various strata of our society will remain inadequate.

There are at least three well-defined groups of foreigners who are different from 'refugees'. It is important that the distinction among them is clearly understood and none of them is confused with or mistaken for a 'refugee'. These categories are:

Temporary Residents, Tourists and Travellers

Persons under this category come to India for a specific purpose and duration with the prior permission of the Government of India. However, in certain circumstances any one in this category could become eligible for being a refugee, if, during their sojourn in India, the situation in their country of origin becomes such as to endanger their lives and liberty if they were to return to their country. Many Iranians who had come to India for studies during the regime of the Shah of Iran, have stayed back in India as refugees after the fall of Shah of Iran and a revolutionary government took his place in 1978. It should be mentioned that no one can automatically claim the right for 'refugee status' under this category. It is the prerogative of the Indian government to satisfy themselves and decide each case according to merits and circumstances.

Illegal Economic Migrants

Any foreigner who might have left his or her country of origin without due authorisation from the authorities concerned, both in the country of origin as well as the country of destination, solely to improve his or her economic prospects, is *not a refugee*. After all, there is no element of persecution or coercion compelling the individual to leave the country of origin. Illegal migrants from Bangladesh are examples of this category. Such persons have to

be treated as illegal and unauthorised entrants into the country and dealt with under the appropriate laws applicable to foreigners like Foreigners Act, Indian Passport Act etc. besides the IPC, Cr.PC etc.

Criminals, Spies, Infiltrators, Militants etc.

None of these can ever become eligible to be refugees. They have to be dealt with under the provisions of the Indian criminal laws as well as any other special laws in force even though some of them may be in possession of valid travel documents.

Internally Displaced Persons (IDP)

Those persons who are fleeing persecution and human rights violations from one region of the country and have sought refuge in another region of the same country, fall under this category. Such persons cannot be categorised as 'refugees' as they have not crossed any international border. Moreover, they have the protection of their national government. These persons are categorised as 'internally displaced persons' (IDP). Kashmiris who have been forced to flee from Jammu and Kashmir and who have settled in other parts of India fall under this category. Incidentally, in many African countries, the IDPs are also treated as 'refugees' within the ambit of the 1951 Convention.

THE REFUGEE SCENE IN INDIA

A brief look at the refugee scenario in India will help appreciate in the proper perspective, the complexities of law enforcement in a variety of situations impinging upon the refugees. India has been home to refugees for centuries. From the time when almost the entire Zorastrian community took refuge in India fleeing from the persecution they were then subjected to on religious grounds in Iran, India has, from time to time continued to receive a large number of refugees from different countries, not necessarily from the neighbouring countries alone. The most significant thing which deserves to be taken note of is that, there has not been a single occasion of any refugee originating from the Indian soil except the transboundary movement of the people during the partition of the country in 1947. On the other hand, it has invariably been a receiving country and in the process, enlarging its multi-cultural and multi-

ethnic fabric. In keeping with its secular policies, India has been the home to refugees belonging to all religions and sects. It is relevant to point out that since its independence India has received refugees not only from some of its neighbouring countries but distant countries like Afghanistan, Iran, Iraq, Somalia, Sudan and Uganda.

The South Asian sub-continent has often witnessed situations where refugees from one or the other neighbouring countries have crossed over to India. Considering the sensitivities of national and regional politics in the sub-continent, the problem of refugees crossing over to India cannot be totally disassociated from the overall security issues relevant locally. At the end of 1999, India had well over 2,51,400 refugees, who do not include those from countries like Afghanistan, Iran, Iraq, Somalia, Sudan and Uganda.

According 'Refugee Status'

Even though India has been the home for a large number and variety of refugees throughout the past, India has dealt with the issues of 'refugees' on a bilateral basis. India, as explained in the earlier pages, has been observing a 'refugee regime' which generally conforms to the international instruments on the subject without, however, giving a formal shape to the practices adopted by it in the form of a separate statute. Refugees are no doubt 'foreigners'. Even though there may be a case to distinguish them from the rest of the 'foreigners', the current position in India is that they are dealt with under the existing Indian laws, both general and special, which are otherwise applicable to all foreigners. This is because there is no separate law to deal with 'refugees'. For the same reason, cases for refugee 'status' are considered on a case-by-case basis. UNHCR often plays a complementary role to the efforts of the Government, particularly in regard to verification about the individual's background and the general circumstances prevailing in the country of origin. That agency also plays an important role in the resettlement of refugees etc.

It may be restated for purposes of clarity and understanding that a refugee is defined as one who is outside the country of nationality (or even country of habitual residence) due to one of the five grounds, namely, a well-founded fear of persecution on

the basis of religion, race, nationality or membership of a political or social group. In some countries, a person who flees his home country because of armed conflicts or wars or other generalised violation of human rights and who may not be targeted on account of any of the five grounds specified above, is excluded from the purview of the above definition of 'refugee'. In many countries a difference is sought to be made between persecution effected by State agents and the one effected by non-state agents as may be the case in places where 'rebel' 'terrorist' and such other groups are active. Under such circumstances it is only those who are affected by the action of the State agents who are held to fulfill the definition of 'refugee' and not the latter.

One of the principal elements to satisfy a claim to refugee status is that the claimant must be 'genuinely at risk'. Various legal "tests" have developed which concern the standard of proof that is required to satisfy what constitutes being genuinely at risk or having a genuine well founded fear of persecution. Some of these tests have been articulated by courts in a number of countries. In the case of *INS vs Cardoza Fouseca* interpretation of the "well founded fear" standard would indicate that "so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is not enough that persecution is a reasonable possibility..." The above standard was considered in *R vs Secretary for the Home Department*, the case of *ex parte Sivakumaran*. The judgement suggested that the 'test' should consider whether there is an evidence of a "real & substantial danger of persecution". The Canadian Federal Court of Appeal considered the above and disapproved the House of Lords formulation in *Joseph Ayei vs Ministry of Employment & Immigration*. They considered the "reasonable chance" standard. Therefore, in sum, in considering the above 'tests' what can be gleaned is a rather liberal standard which requires that if, "...there is an objective evidence to show that there is a reasonable possibility or chance of relevant prosecution in the claimant's state of origin", the claim should be adjudged well founded.

In the case of India, the decision as whether to treat a person or a group of persons as refugees or not is taken on the merits and circumstances of the cases coming before it. The Government

of India (GOI) may be often seen as following a policy of bilateralism in dealing with persons seeking to be refugees. For example, Afghan refugees of Indian origin and others, who entered India through Pakistan without any travel documents, were allowed entry through the Indo-Pakistan border till 1993. Most of the refugees had entered India through the Attari border near Amritsar in Punjab. Subsequent to 1993, the Government altered its policy of permitting Afghan refugees freely into India.

In the case of a large number of them (many of them were Afghan Sikhs and Afghan Hindus) who had to flee from Afghanistan under circumstances which fulfilled one or more of the grounds specified earlier for being treated as a 'refugee', the GOI did not officially treat them as refugees. However, the UNHCR with the consent of the GOI, recognised them as refugees under its mandate and is rendering assistance to them. In such cases, even though the local Government is kept in the picture, the UNHCR becomes responsible to look after them as well as 'administer' them and also to ensure that such refugees do not in any way violate the code of conduct governing them.

In contrast, in 1989, when the Myanmar authorities started suppressing the pro-democracy movement in that country and about 3,000 nationals of that country sought refuge in India, the GOI declared that in accordance with well accepted international norms defining refugee status, no genuine refugee from Myanmar would be turned back and in fact, they were accepted as refugees by the GOI. Similar is the case of Sri Lankan Tamil refugees crossing the sea to enter the southern Indian State of Tamil Nadu. The Government of India followed a specific refugee policy regarding Sri Lankan refugees and permitted them entry despite the fact that the refugees did not have travel documents.

In cases where the Government of India recognises the claim of refugee status of a particular group of refugees, there is minimal interference if any, caused to the refugees. This is the case even though there may be no official declaration of any policy of grant of refugee status to that group. However, there are instances where refugees recognised by the Government of India and issued with valid refugee identity documents by the government, are later prosecuted for illegal entry/over stay. The National Human Rights

Commission had taken up successfully the cause of a number of Sri Lankan Tamil refugees who had been likewise prosecuted.

EVIDENCE REQUIRED TO ESTABLISH A REFUGEE CLAIM

In order for a claimant refugee to put forward a genuine claim for determination of refugee status, it is crucial to accumulate all the documents that the claimant can muster in support of the grounds of persecution or fear thereof resulting in flight from country of origin. The documentation may be in the form of an identity card of employment with some governmental agency in the country of origin, or an identity card indicating membership of a particular group. Production of the same would be evidence of a claim of involvement with particular groups and would also serve to prove the claimant's identity. Any other information that the claimant may be able to gather to prove specific persecution or fear thereof, such as names of persecutors, leaders of groups involved in committing persecution, details of areas where persecution is committed will help strengthen the case of the claimant. Similarly, the claimant must be able to establish all his statements to interviewing authorities in a consistent manner, without discrepancies. If there are obvious contradictions between the statements made by the claimant himself at different times to different persons, his claim to refugee status may be rejected. The statements made by the claimant must also not be contradictory to the general information available on the country of origin. Corroboration and confirmation of facts pertaining to persecution is an essential factor in determining refugee status. Efforts are made by authorities to gather background human rights data from a broad cross section of official and non-governmental sources in order to supplement whatever evidence may be adduced by the claimant himself. Thus, circumstantial evidence that persons similarly situated to the claimant are at risk in the country of origin, is essential.

To establish a fear of persecution, the term "fear" is not to be judged on the basis of the emotional reaction of the claimant. Instead, "fear" must be employed to mandate a forward looking assessment of risk: Therefore, persons who had already suffered persecution in their country of origin, as well as those who may

be judged to face prospective risk of persecution in event of return to their country of origin, would be able to claim refugee status.

The heart of the refugee determination process is the careful consideration of the claimant's own evidence, whether provided orally or in documentary form. It is ideally required that all claimants for refugee status receive an opportunity to be heard by the authority responsible for the adjudication of their case. All the materials thus collected and collated are then tallied with independent, internationally acknowledged information available on the region from which the claimant has arrived. In possible circumstances and cases, the information thus obtained is also reconfirmed from the UNHCR office in the country of origin.

Along with making claims for refugee status, refugees may also seek redressal of immediate basic problems facing them, such as food, shelter, legal aid etc. In regard to such matters the UNHCR plays a major role by providing in suitable and deserving cases, a "Subsistence Allowance" to destitute refugees and their dependents. The UNHCR also helps in enabling the refugee to find his own accommodation or to share a tenanted accommodation with another similarly placed refugee. When a refugee seeks legal aid for himself or for his dependent, the UNHCR may provide the assistance or recommend an Advocate who is familiar with handling refugee matters, to help sort out the problem faced by the refugee. In cases where the refugee is to be deported back to his country of origin, the UNHCR officials may request the Central Government to stall deportation proceedings, pending UNHCR attempts at resettlement of the refugee in a safe country. In order to make such resettlement possible, the UNHCR takes up such cases with the Embassies of other countries for grant of travel to and stay facilities in their countries.

India's International Commitments

India does not have on its statute book a specific and separate law to govern refugees. In the absence of such a specific law, all existing Indian laws like The Criminal Procedure Code, The Indian Penal Code, The Evidence Act etc. apply to the refugees as well. Even though India is not a signatory to the 1951 Convention on refugees and also the 1967 Protocol, India is a signatory to a

number of United Nations and World Conventions on Human Rights, refugee issues and related matters. India's obligations in regard to refugees arise out of the latter. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. The EXCOM is the organisation of the UN, which approves and supervises the material assistance programme of UNHCR. Membership of the EXCOM indicates particular interest and greater commitment to refugee matters. India voted affirmatively to adopt the Universal Declaration of Human Rights which affirms rights for all persons, citizens and non-citizens alike. India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967. India ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Convention on Economic, Social and Cultural Rights (ICESCR) in 1976. India ratified the UN Convention on the Rights of the Child in 1989. India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1974 under which Article 1 imposes legally binding obligation. India accepted the principle of *non-refoulement* as envisaged in the Bangkok Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. These Principles also contain provisions relating to repatriation, right to compensation, granting asylum and the minimum standard of treatment in the state of asylum.

In order to get a clear understanding of the rights which devolve on the refugees on account of India's international commitments mentioned above and their relevance to law enforcement, it is pertinent to enumerate some of the more important rights accruing to refugees under the above mentioned Conventions. Article 13 of the Universal Declaration of Human Rights guarantees 'Right to Freedom of Movement', Article 14 'Right to Seek and Enjoy Asylum' and Article 15 the 'Right to Nationality.' Article 12 of the ICCPR deals with 'Freedom to leave any country including the person's own' and Article 13 'Prohibition of expulsion of aliens except by due process of law'. Under Article 2 A of the UN Convention on the Rights of the Child, the State must ensure the rights of "each child within its jurisdiction without

discrimination of any kind"; Article 3 lays down that "In all actions concerning children the best interest of the child shall be a primary consideration"; Article 24 relates to 'Right to Health'; Article 28 to 'Right to Education' and Article 37 to 'Juvenile Justice'.

REFUGEES AND THE INDIAN LEGAL FRAMEWORK

Refugees encounter the Indian legal system on two counts. There are laws which regulate their entry into and stay in India along with a host of related issues. Once they are within the Indian territory, they are then liable to be subjected to the provisions of the Indian penal laws for various commissions and omissions under a variety of circumstances, whether it be as a complainant or as an accused. These are various constitutional and legal provisions with which refugees may be concerned under varying circumstances.

Constitutional Provisions

There are a few Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens.

The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees. The Hon'ble High Court of Guwahati has in various judgements, recognised the refugee issue and permitted refugees to approach the UNHCR for determination of their refugee status, while staying the deportation orders issued by the district court or the administration.

In the matter of *Gurunathan and others vs. Government of India* and others and in the matter of *A.C.Mohd.Siddique vs. Government of India and others*, the High Court of Madras expressed its unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will. In the case of *P.Nedumaran vs. Union*

Of India before the Madras High Court, Sri Lankan refugees had prayed for a writ of mandamus directing the Union of India and the State of Tamil Nadu to permit UNHCR officials to check the voluntariness of the refugees in going back to Sri Lanka, and to permit those refugees who did not want to return to continue to stay in the camps in India.

The Hon'ble Court was pleased to hold that "since the UNHCR was involved in ascertaining the voluntariness of the refugees' return to Sri Lanka, hence being a World Agency, it is not for the Court to consider whether the consent is voluntary or not." Further, the Court acknowledged the competence and impartiality of the representatives of UNHCR. The Bombay High Court in the matter of *Syed Ata Mohammadi vs. Union of India*, was pleased to direct that "there is no question of deporting the Iranian refugee to Iran, since he has been recognised as a refugee by the UNHCR." The Hon'ble Court further permitted the refugee to travel to whichever country he desired. Such an order is in line with the internationally accepted principles of 'non-refoulement' of refugees to their country of origin.

The Supreme Court of India has in a number of cases stayed deportation of refugees such as *Maiwand's Trust of Afghan Human Freedom vs. State of Punjab*; and, *N.D. Pancholi vs. State of Punjab & Others*. In the matter of *Malavika Karlekar vs. Union of India*, the Supreme Court directed stay of deportation of the Andaman Island Burmese refugees, since "their claim for refugee status was pending determination and a *prima facie* case is made out for grant of refugee status." The Supreme Court judgement in the Chakma refugee case clearly declared that no one shall be deprived of his or her life or liberty without the due process of law. Earlier judgements of the Supreme Court in *Luis De Raedt vs. Union of India* and also *State of Arunachal Pradesh vs. Khudiram Chakma*, had also stressed the same point.

Arrest, Detention and Release

There is yet another aspect of *non-refoulment* which merits mention here. The concept of 'International Zones' which are transit areas at airports and other points of entry into Indian territory, which are marked as being outside Indian territory and the normal

jurisdiction of Indian Courts, is a major 'risk, factor' for refugees since it reduces access of refugees to legal remedies. This legal fiction is violative of the internationally acknowledged principle of *non-refoulement*. In the matter of a Palestinian refugee who was deported to New Delhi International Airport from Kathmandu was sent back to Kathmandu from the transit lounge of the Airport. He was once more returned to New Delhi International Airport on the ground of being kept in an 'International Zone'. Such detention is a classic case on the above point barring legal remedies to the detained refugee. The only relief in such a case is through the administrative authorities.

Articles 22(1), 22(2) and 25(1) of the Indian Constitution reflect that the rules of natural justice in common law systems are equally applicable in India, even to refugees. The established principle of rule of law in India is that no person, whether a citizen or an alien shall be deprived of his life, liberty or property without the authority of law. The Constitution of India expressly incorporates the common law precept and the Courts have gone further to raise it to the status of one of the basic features of the Constitution which cannot be amended.

The Indian Constitution does not contain any specific provision which obliges the state to enforce or implement treaties and conventions. A joint reading of all the provisions as well as an analysis of the case law on the subject shows international treaties, covenants, conventions and agreements can become part of the domestic law in India only if they are specifically incorporated in the law of the land.

The Supreme Court has held, through a number of decisions on the subject that international conventional law must go through the process of transformation into municipal law before the international treaty becomes internal law. Courts may apply international law only when there is no conflict between international law and domestic law, and also if the provisions of international law sought to be applied are not in contravention of the spirit of the Constitution and national legislation, thereby enabling a harmonious construction of laws. It has also been firmly laid that if there is any such conflict, then domestic law shall prevail.

Role of Border Guarding Forces and Law Enforcement Officials

It will be useful to acquaint oneself with the realities on ground when a refugee attempts to cross or actually crosses over to India. The Border Security Force (BSF) which guards the India-Pakistan and the India-Bangladesh borders, the Indo-Tibetan Border Police Force (ITBPF) which is deployed along the India-Tibet (China) border and the Assam Rifles (AR) which is deployed along the India-Myanmar border, are usually the first representatives of the Indian system which refugees may encounter when they enter or exit India by land routes.

Vastness and, sometimes even the treacherous nature of the border terrain make it difficult to physically man the entire international borders of India. The gaps in the border left unguarded, are often used by refugees to illegally enter/exit the Indian territory. If caught while entering illegally, the authorities may return the refugee across the border, sometimes even without ascertaining relevant refugee claims of persecution in the country of origin, though this is not in strict conformity with the internationally acknowledged principle of *non-refoulement*. When this happens, the refugee may face 'forced return' to the country where he/she came from. In the alternative, the border guarding force may interrogate and detain the person as permissible under the law of the land, at the border itself, pending decision by the administrative authorities regarding his plea for refuge/ asylum. In all such cases, the person will have to be ultimately handed over to the local police who will exercise their powers under relevant provisions of the Criminal Procedure Code (Cr.PC).

It goes without saying that there will be circumstances and occasions when the authorities may have to be satisfied about the *bona fides* of the person concerned. It is part of the duty and responsibility of the authorities to rule out any criminal or anti-national taking the plea of a 'refugee' and entering the country for *mala fide* purposes. If caught while illegally exiting India, the person (refugee) may be handed over to the local police for investigation and for further action according to law. In cases where the refugee is found in possession of invalid travel documents or in cases of violation of any other Indian law, the

refugee may be detained by the border authorities at the border post itself and handed over to the local police for investigation. In all such instances, after the registration of a case on the basis of a First Information Report, the police would lodge the accused refugee in the area prison and produce him/her in the local court for trial in conformity with the provisions of CrPC..

The following two cases will illustrate the position of law as well as the procedure that is followed in two specific circumstances. *Mehmud Ghazaleh*, an Iranian refugee registered with UNHCR, was detained while illegally exiting India for Nepal via the Sonauli border in District Maharajgunj, U.P. The refugee was travelling on forged & fabricated travel documents. He was detained by the border authorities who *prima facie* discovered that his travel documents were forged. They handed the refugee over to the local police station at Sonauli for investigation and registration of FIR u/s 419/420/468/471 IPC read with Sec 3/6 of the Passport Act and Sec.14 Foreigners Act. He was subsequently interned at the Gorakhpur district jail. In another case two Afghan refugees, Shah Ghazai and his minor son Assadullah, were apprehended by the authorities at the Attari border at Amritsar, Punjab while attempting to illegally exit India for Afghanistan via Pakistan. They were handed over to the local police in Gharinda, district Amritsar for investigation and registration of FIR and were subsequently interned at the Amritsar Central Jail.

NGOs and Human Rights activists look for instances and often intervene through legal action in courts, in cases of suspected illegal detention of refugees, particularly in cases where it is alleged that formal FIR is not recorded by the concerned law enforcement authorities even after such a detention. It is sometimes alleged that such a situation obtains in cases where the refugee is suspected to be a spy or a terrorist entering the Indian borders with the deliberate and *mala-fide* intent to cause harm to the stability and integrity of the country or a person suspected to be engaged in trans-border crime like smuggling etc. In such cases allegations are made that the refugee's detention would not be recorded until the authorities are in a position to know the credentials of the individual(s) concerned. The following case is illustrative of the above, even though the circumstances pertaining to it may be

somewhat different. An Iranian refugee, Syed Ata Mohamadi, recognised by UNHCR, was apprehended at the Bombay International airport en route to Canada. He was detained at the immigration lounge of the airport for travelling on an assumed name, on a false passport. His detention lasted over a month, he was released only on the intervention of the Bombay High Court.

Immigration and Custom officials come into the scene at the point of entry into India through seaports and airports. In cases where a refugee is detected while entering/ exiting established seaports and airports on Indian territory, without valid travel documents, he/she is immediately detained by the Immigration/ authorised Custom officers and *prima facie* investigated. In cases of illegal entry, the immigration authorities usually take steps to deport the refugee immediately to the country where he or she last came from.

This, it may be mentioned, is not in conformity with the principle of *non-refoulement*. Pending deportation, the refugee is detained at a detention cell in the immigration section of the airport, seaport etc. In such an eventuality, the refugee has to arrange to buy his/her own meals and other requirements from resources at his/her disposal. In addition, when deported, the cost of the ticket is also required to be paid by the refugee, which often renders him/her a destitute. The following is a case of this kind. A Palestinian refugee *Majid Ahmad*, was deported from Kathmandu to New Delhi. He was again sent back to Nepal and was once again deported back, thus amounting to four trips in two days. He was subsequently detained at the Immigration lounge of the International Airport at New Delhi for over 25 days. All the expenses for his food as well as his forced travels including his final deportation to Bangladesh were met from his personal resources, which no doubt was almost fully depleted.

Forged/Fabricated Travel Documents

In the event of violation of any other law, such as forgery/ fabrication of travel documents by a refugee, the immigration/ custom officials hand over the accused refugee to the local police where a First Information Report is registered against the accused refugee and taken into police custody. He/she would be produced

in the local sessions court and may be ordered to be lodged in the local prison awaiting trial. A case of this kind is cited here. A 17 year old Sri Lankan Tamil refugee, Winston Venojan registered with UNHCR, was separated from his family in Madras and came to Delhi, where he received information that his father was in London. In an attempt to reach London, he was duped by a travel agent who fabricated a passport for him. The forgery was detected at the New Delhi International Airport, and the refugee was handed over by the custom authorities to the area police for investigation and registration of FIR. The refugee was produced before the concerned Metropolitan Magistrate who remanded him to judicial custody in Tihar jail.

In instances where the immigration/ custom authorities suspect discrepancies in the travel documents of a refugee when he or she enters the country, they may send the purported documents for further investigation to the local Foreigners Regional Registration Office (FRRO) and direct the refugee to tender appearance at the FRRO the next day. An Iraqi refugee, was detained at the New Delhi International Airport for holding alleged false travel documents. He was released from detention, but his travel documents were seized and he was asked to approach the local FRRO for reclaiming them the next day. However, he was later arrested and a FIR was lodged against him u/secs.419/ 420/ 468/ 471 of the Indian Penal Code.

In cases where refugees initially enter India with valid travel documents which in the ensuing period expire, or in cases where discrepancies in the travel documents are detected subsequent to his/her entry into India, the refugee may be arrested on expiry of the said documents, or when the said discrepancy is detected. Often, refugees fail to obtain renewal of their visas/ residential permit from the local Foreigners Regional Registration Office and random checks are routinely conducted by the local police, amongst foreigners, including refugees, at places commonly frequented by them such as hotels, restaurants, religious places, markets etc. Those refugees who do not comply with the mandatory requirement of renewal/obtaining residence permits, are arrested and produced before the local sessions court which may direct that they may be lodged in the local prison pending trial.

'Leave India' Notices

The police usually do not consider any pleas of claim of refugee status, persecution in country of origin etc. Further, the administrative authorities vide sec.3 of the Foreigners Act, 1946 may issue *Leave India Notice* to refugees who have failed to obtain extension of their travel permits, or who are ordered to be deported by the court.

In such cases the refugee may be arrested if apprehended, and may be forcibly deported. *Gurinder Singh and Karamjit Singh*, two Afghan Sikhs of Indian origin, who had fled persecution from Afghanistan were registered as refugees with UNHCR in New Delhi. They were issued Leave India Notices by the FRRO to leave India within 7 days of receipt of the notice. The only remedy under such circumstances is through legal action in the appropriate court. In this instance, a criminal writ petition was filed in the Punjab & Haryana High Court at Chandigarh and interim stay of the Leave India Notice was obtained.

INDIA'S MEASURES FOR FULFILLING INTERNATIONAL OBLIGATIONS:

India has taken numerous steps and measures to fulfill its international obligations in respect of refugees. Some of the more important ones merit detailed mention.

Entry into India

The Government of India have followed a fairly liberal policy of granting refuge to various groups of refugees though some groups have been recognised and some other groups have not been, often keeping in view the security concerns of the nation. However, the emerging trend of past refugee experiences bear testimony to the fact that entry into India for most refugee groups is in keeping with international principles of protection and *non-refoulement*. Further, such entry is not determined by reasons of religion or any other form of discrimination. It may be pointed out that India has granted refuge to Buddhist Tibetans, Hindus and Christians of Sri Lanka, Hindus and Muslims from the then East Pakistan, Hindus, Muslims, Christians and Buddhists from Bangladesh and Sikhs and Muslims from Afghanistan etc.

Work Permits

There is no concept of work permits in India, although refugees who are granted residence permits do find employment in the informal sector, without facing any objection from the administration. In fact, Tibetan refugees have been granted loans and other facilities for self-employment. Similarly, most Sri Lankan Tamils have been granted freedom of movement within the camp areas, enabling work facilities for them as casual labour. Similarly, Chakma and Afghan refugees have also been engaging in gainful, even if it is in minor forms of employment.

Freedoms

Generally, refugees are allowed freedom concerning their movement, practice of religion and residence. In case of refugees whose entry into India is either legal or is subsequently legalised, there is limited interference by the administration regarding these basic freedoms. However, those refugees who enter India illegally or overstay beyond permissible limits, have strict restrictions imposed upon them in accordance with the statutes governing refugees in India i.e., The Foreigners Act, 1946, Foreigners Order, Passport Act etc.

Handling Refugees Legally

From the moment of entry of a refugee into the Indian territory, the laws of India would apply to him/her. Therefore, enforcement and security personnel who have to deal with refugees, cannot overlook the legal requirements which have to be adhered to by them. In the following paragraphs an attempt has been made to identify some common situations which may be faced by enforcement and security personnel in dealing with refugees. An attempt has also been made to suggest possible courses of action within the legal framework.

The main purpose of this attempt is twofold. Firstly, it will help to focus on the need for showing due concern for human rights. Secondly, it is also important to create awareness about the unavoidable compulsions, which forced the person concerned to take refuge in the country and the inherent and unmistakable poignant human situation in the entire episode. It is pertinent to remember that the circumstances and facts pertaining to each

refugee may be peculiar and different from the rest. In such cases, therefore, it is extremely important to ascertain, understand and appreciate the background of the compelling circumstances of each of the cases so that the law of the land may be applied in the most appropriate manner. It is in this context that the legal provisions, directions and guidelines, if any, issued by competent courts as also the practical experience gained in dealing with such cases, would come in handy.

Keeping the above aspects in view, some of the more important situations relevant to security personnel are enumerated below. An attempt has been made to highlight the more feasible options which could be considered in dealing with refugees. It goes without saying that these options have to be exercised within the legal frame-work of the country.

At the Point of Entry

Refugees may enter India by land, air and/or sea. Depending upon the point of entry, they will come into initial contact with immigration authorities at airports or sea-ports or with the border guarding authorities at the border check-posts. It is relevant to point out that more often than not, a refugee would be without valid travel documents or valid identity documents making his/her entry into the country 'illegal'. Since India has not yet incorporated the principle of *non-refoulement* in its legal statutes, the person concerned would have to face the prospect of being arrested and prosecuted as per the laws of the land. However, this should not be held against the intending refugee to debar entry as a matter of course. Therefore, the agency which comes into contact with the refugee initially, will have to satisfy itself about the bonafides of the intending refugee instead of pre-emptorily refusing entry. Under the circumstances, the ends of justice would be met if the person seeking refuge does not have valid travel documents, is arrested and produced in a court of law for appropriate judicial action. In the meanwhile, even as that person is under judicial detention, the security agency will have opportunity to verify his claims and also to notify the concerned competent authority in government to take decision in the matter. In such cases the help of the UNHCR could also be sought so that agency would be in a position to help speed up the process of

verification and also to render suitable help in finalising the legal process.

Detention

A refugee may face detention as soon as he/she illegally crosses the international border into India. It is pertinent to appreciate that the refugee has at that moment just entered an unknown country, after fleeing to save his/her life from his/her own country of origin. He/she may have undergone severe trauma of loss of family and friends in his/her homeland or en route India. The refugee in such situations may be unable to explain his/her background during initial interrogation, giving rise to apprehension on the part of local authorities regarding the genuineness of his/her subsequent refugee claim. He/she may be suspected to be a spy or infiltrator in the light of inconsistent statements that may have been made by him/her to the authorities. This is bound to be further compounded if the refugee is not in possession of the usual 'travel documents'. In fact, it would be very unreasonable to expect him/her to possess valid travel documents, considering the background of his/her having to escape from his/her own country. The same may result in further interrogation and continued detention pending registration of FIR (First Information Report, which is usually the basis of the start of 'investigation'). In such a situation there may be no course of action open to the refugee to follow, since he/she has no family to lean on locally and who may be aware of his/her plight. Further, the refugee would not be in a position to get a message across to any person outside regarding his/her predicament. What is more, because of the peculiarities of the circumstances, the refugee may be detained in a remote place further compounding an already difficult and unnerving situation.

In such circumstances it would be quite justified for the security agency to register a case under the provisions of IPC/Foreigners' Act etc. and even arrest the refugee and forward him/her to the court having local jurisdiction. In case the refugee desires legal help it is desirable that the local 'legal-aid cell' may be allowed to be contacted by the refugee. Where such facilities are not available and the refugee is not in a position to hire legal services on his/her own, the court may be requested to notify the UNHCR to render help to the refugee to seek legal assistance. If any local

NGO is available and willing, their services may also be sought to help out the refugee.

Lack of Medical Aid in Detention

While in detention the refugee may be suffering from some physical ailment requiring immediate medical attention. In the event that the detaining authority does not provide the requisite medical aid, the same may result in devastating consequences. In some cases court's directions can be obtained and appropriate medical attention and treatment given to the refugee. Here again, NGOs can play a very useful role. In the case of a Palestinian refugee who was detained at the international airport in New Delhi consequent to a deportation order pending against him, a writ petition was filed to obtain the Delhi High Court's order that the refugee be provided at least the basic necessities like food and medical care. Knowledge of such cases would help security personnel to foresee and where necessary, seek the help of an agency like the UNHCR or a local NGO to render necessary help to the refugee.

Detention of Women Refugees

Most courts are of the opinion that in cases where there has been no grave breach of law by the accused woman (refugee), she may be released on bail pending trial. In the specific case of Marui, an Iraqi refugee who fled persecution from Iraq with her husband and children, the family was arrested in New Delhi. However, Marui being a woman, was released on bail soon thereafter though her husband continued to be in detention till much later. Even after such a release, it is quite possible that the woman may find herself in some predicament having been suddenly isolated in a foreign country. In such specific cases, it would make the task of the security officials easier if they liaised with the UNHCR or any local NGO to provide the much needed psychological support to the refugee woman. Also, in such cases where deportation orders are passed by the courts, the UNHCR can help to rehabilitate the concerned refugee in another sympathetic country. Knowledge on the part of security and enforcement officials of such available options would help in perpetuating humanitarian attitude on the part of security officials.

Detention of Refugee Children

Refugee children face many problems which deserve to be treated with due sensitivity, care and caution by the authorities concerned. Usually, access is provided to detained mothers to meet their children and tend to their needs. There are, however, cases of sufficiently grown up refugee children who may be between the ages of 15 and 18 years of age and who may be detained for non possession of valid travel documents. Such a problem mostly arises due to the fact that children are not granted separate residential permits but are included in their parent's permits. In cases involving children who do not possess separate residential permits, the UNHCR may be in a position to help sort out the problem, particularly because in cases where refugee children are separated from their families, UNHCR makes all possible attempts to reunite them. Therefore, it will be advantageous if the security agency concerned seeks the help and assistance of the UNHCR in such matters.

In the specific case of Winston Venojan, a Sri Lankan Tamil refugee, thanks to the UNHCR, the 17 year old boy, who had got separated from his parents, was reunited with them. In this case the boy was arrested on landing at New Delhi. Bail was, however, granted to him within a short time. In genuine cases of this kind, the security agency should always consider not to oppose bail. In the meanwhile, the UNHCR got clearance from the British Immigration and Nationality Department for the boy to travel to the UK. However, the refugee could not be permitted to leave the country till the disposal of the case for the violation of some of the legal provisions under the Indian laws. Luckily this matter was speedily disposed off on the intervention of the Delhi High court. Once the court's orders were obtained, the refugee was provided with Red Cross travel documents to travel to London. The security agency can further help in such genuine case by speedy investigation and filing of charge sheet in time.

Securing that the Refugee is not Untraceable on Release from Detention

Release of a refugee from detention is often fraught with legalities. Courts are sometimes reluctant to direct release of the

refugee without ensuring about securing his/her presence in a specific place. The primary concern of courts while barring the deportation of refugees is that the refugee should not become "untraceable". In some cases of this kind, courts have agreed that the refugee may be handed over into the "care of UNHCR". This would ensure that the refugee will be available whenever wanted. In addition, the UNHCR would take care of the refugee till the legal issue is disposed of. In cases where the UNHCR refuses to take custody of the said refugees, there will be no alternative but to send the refugees back to Jail.

Securing against Re-arrest on Release from Detention

The refugee on release from prison after serving his/her sentence may still not be having valid travel documents. In such circumstances, the refugee may face the risk of re-arrest while commuting from the prison to secure residential permit/refugee certificate etc., Hence the authorities are often requested to provide police escort to the refugee to enable him to reach the authorised place safely and to secure documents for valid stay in India. This measure would help speed up to regularise the stay in India, which is desirable from both the point of view of security as well as humanitarian considerations.

Timely filing of Charge Sheet by the Prosecution to Enable Pleading Guilty

The need for timely filing of charge-sheet in courts of law cannot be over emphasised, particularly in the cases of refugees. Only when the charge sheet is filed it is possible for the refugee to be aware of the charges against him and to plead guilty to the same. In some cases the refugee may require early disposal of his/her case, hence filing of charges at an early stage is crucial.

It can be easily seen from the foregoing paragraphs that India notwithstanding its own security concerns, particularly in the last couple of decades, and pressure of population and the attendant economic factors, continues to take a humanitarian view of the problem of refugees. Even though the country has not enacted a special law to govern 'refugees', it has not proved to be a serious handicap in coping satisfactorily with the enormous refugee problems besetting the country. The spirit and contents of the UN

and International Conventions on the subject have been, by and large, honoured through executive as well as judicial intervention. By this means, the country has evolved a practical balance between human and humanitarian obligations on the one hand and security and national interest on the other. It is in balancing these interests, which may sometimes appear to be competing with each other, that the security and law enforcement agencies face day-to-day challenges. If and when a separate 'Refugee Law' for the country is enacted, it is important that this aspect is given due consideration. It is important that security and enforcement officials do not overlook both the legal as well as the underlying human angles inherent in the 'refugee' situation, specially the latter.

India: Policies and Laws towards Refugees

The Indian government deals with refugees at both the political and administrative levels. The result is that refugees are treated under the law applicable to aliens. In the case of refugee protection, the Constitution of India guarantees certain fundamental rights, which are applicable to all non-citizens, namely, the right to equality (Article 14), the right to life and personal liberty (Article 21) and the freedom to practice and propagate their own religion (Article 25). Any violation of these rights can be remedied through recourse to the judiciary as the Indian Supreme Court has held that refugees or asylum seekers cannot be discriminated against because of their non-citizen status.

The National Human Rights Commission of India (NHRC) has functioned effectively as a watchdog for the protection of refugees. The commission has approached the Supreme Court of India under Article 32 of the Constitution and obtained protection for the Chakma refugees from the Chittagong Hills tribal areas of Bangladesh when their life and security was threatened by local politicians and youth leaders in the state of Arunachal Pradesh. Relief was granted by the Supreme Court on the basis of the rights of aliens under Articles 14 and 21.

The chief justice of the Supreme Court, Justice Ahmadi, speaking for the court in *National Human Rights Commission vs. State of Arunachal Pradesh* (1996 SCC 742), said that the State is bound to protect the life and liberty of every human being. He

pointed out that the rights of refugees under the Constitution of India were confirmed by Article 21, which also included the right to non-refoulement. In the case of *Khy Htoon and Others vs. State of Manipur*, the Imphal bench of the Guahati High Court ruled that refugees have fundamental rights under Articles 10, 21 and 22 of the Indian Constitution. Justice V. R. Krishna Iyer considers Article 14, which provides equal protection of the law, as being applicable to all persons, not merely citizens.

India's refugee policy is further governed by certain administrative regulations. The standard of humane treatment set by these administrative regulations flows from the ethos that persons displaced from their homes need both protection and economic sustenance. The administrative experiences of the government department responsible for rehabilitation and the laws adjudicated at the time of partition have contributed towards a refugee policy for India. In India, refugees are registered under the 1939 Registration Act, which is applicable to all foreigners entering the country. Under the 1946 Foreigners Act, the government of India is empowered to regulate the entry, presence and departure of aliens in India, though the word alien itself is nowhere defined. Entry is also governed by the Passport Act of 1967. Entry can be restricted if a person does not have a valid passport or visa, though the government can exempt persons when it so desires. These procedures are linked at this stage to individuals who enter Indian borders without a valid visa or any other document. Though it is related to illegal migrants, the exemption provision is applicable to refugees. It should be noted that refugees in developing countries, unlike those in the West (barring those from former Yugoslavia), usually descend in large numbers. Under these circumstances, refugee determination becomes an administrative task to oversee the relief and rehabilitation process rather than to supervise who stays or does not stay.

As mentioned previously, the government of India alone determines refugee status and has no specific legislation to deal with refugees. Prof. Saxena of Jawaharlal Nehru University maintains that despite this lacuna India does apply in practice certain articles of the 1951 U.N. Refugee Convention. These include:

- Article 7 as India provides refugees the same treatment as all aliens,
- Article 3 as India fully applies a policy of non-discrimination,
- Article 3A as no penalty is imposed on illegal entry,
- Article 4 as religious freedom is guaranteed,
- Article 16 as free access to the courts is provided,
- Articles 17 and 18 as work permits have no meaning and refugees do work, thus, complying with these articles on wage-earning rights,
- Article 21 as freedom of housing is allowed and refugees need not stay in camps, for freedom of movement is guaranteed to all aliens, except in certain areas where special permits are required not only for aliens but also for all Indians and
- Articles 27 and 28 as identity and travel cards are issued to refugees.

However, many activists have contested the assertion of Prof. Saxena. They point out that the majority of Sri Lankan Tamil refugees and almost all of the Jammu and Chakma refugees were forced to live inside camps. Severe restrictions were imposed on their freedom of movement. In addition, the asylum seekers from Burma were arrested and jailed; and during 1995-1997, approximately 5,000 Chin refugees from Burma were pushed back over the border. They also point out that since the government does not issue 'residence permits' to all refugees they are unable to open bank accounts, rent houses and set up a business. Moreover, Indian educational institutions do not admit refugees. As a result, young refugees are unable to pursue their academic careers.

To conclude, though India is not a party to the 1951 U.N. Refugee Convention or its Protocol, its domestic laws have not been found to be in conflict with international laws. While it can be justifiably proud of having followed a programme of humane treatment of refugees, there is still an absence of uniform treatment of different refugee groups with respect to refugee rights, resulting in discrimination in terms of assistance and opportunities. To protect refugees by means of the activists' approach has its own

limitations, however. Thus, there is a need for the enactment of a national law to provide for refugees in a systematic manner.

Judicial Interpretations: Case Law in India

In India, the judiciary has played a very important role in protecting refugees. Court orders have filled legislative gaps and in many cases have provided a humanitarian solution to the problems of refugees. Moreover, Indian courts have allowed refugees and intervening non-governmental organisations (NGOs) to file cases before them. Furthermore, the courts have interpreted provisions of the Indian Constitution, existing laws and, in the absence of municipal law, provisions of international law to offer protection to refugees and asylum seekers. Presented below is a summary of the type of protection that the Indian courts have provided refugees.

Physical Security

Indian courts have decided in a number of cases that the constitutional protection of life and liberty must be provided to refugees. In the cases of *Luis de Readt* ([1991] 3 SCC 554) and *Khudiram* (Nos. 1994 Supp. SCC 615), the Supreme Court held that Article 21 of the Constitution of India, which protects the life and liberty of Indian citizens, is extended to all, including aliens. Below are some of the most important decisions of the Supreme Court.

The Supreme Court of India in the case of *National Human Rights Commission vs. State of Arunachal Pradesh* restrained the forcible expulsion of Chakma refugees from the state (Civil WP No. 720: 1996 Supreme 295). The Supreme Court in its interim order on Nov. 2, 1995, directed the state government to ensure that the Chakmas situated in its territory are not ousted by any coercive action not in accordance with the law. The court directed the state government to ensure that the life and personal liberty of each and every Chakma residing within the state should be protected. Any attempt to forcibly evict or drive them out of the state by organized groups should be repelled by using paramilitary or police force; and if additional forces are required, then the state should take the necessary steps. The court also decided that the Chakmas shall not be evicted from their homes except in accordance with the law,

the quit notices and ultimatums given by other groups should be dealt with in accordance with the law, the application for their citizenship should be forwarded and processed expeditiously and, pending the decision on these applications, they shall not be evicted.

Non-Refoulement and the Right to Refugee Status

In a number of cases, Indian courts have protected the rights of refugees where there are substantial grounds to believe that their life would be in danger. There are cases where the courts have ordered the life of refugees who are in danger to be safeguarded and have allowed them to be granted refugee status by the United Nations High Commissioner for Refugees (UNHCR). In *Zothansangpuri vs. State of Manipur* (Civil Rule No. 981 of 1989), the Gauhati-Imphal bench of the Guahati High Court ruled that refugees have the right not to be deported if their life was in danger.

In *Dr. Malvika Karlekar vs. Union of India*, (criminal) 583 of 1992 in writ petition, the Supreme Court held that authorities should consider whether refugee status should be granted; and until this decision was made, the petitioner should not be deported. In *Bogyi vs. Union of India* (Civil Rule No. 981 of 1989), the Gauhati High Court not only ordered the temporary release of a Burmese man from detention but approved his stay for two months so that he could apply to UNHCR for refugee status (Civil Rule No. 1847/89 Gauhati High Court).

The case of *U. Myat Kayew and Nayzan vs. State of Manipur* (Civil Rule No. 516 of 1991) has contributed substantially to India's refugee policy. It involved eight Burmese people, aged 12 to 58, who were detained in the Manipur central jail in Imphal for illegal entry. These people had participated in the democracy movement, had voluntarily surrendered to the Indian authorities and were taken into custody. The cases were registered under Section 14 of the Foreigners Act for illegal entry into India. They petitioned for their release, however, to enable them to seek refugee status with UNHCR in New Delhi. The Gauhati High Court, under Article 21, ruled that asylum seekers who enter India, even if illegally, should be permitted to approach the office of the U.N. high commissioner to seek refugee status.

Right to Basic Amenities

In *Digvijay Mote vs. Government of India* (Writ Appeal No. 354 of 1994), the High Court of Karnataka in Bangalore, considering the rights of 150 Sri Lankan refugee children, ordered the state to make the necessary arrangements to provide basic amenities to the refugee children in the camp on humanitarian grounds. In *Majid Ahmed Abdul Majid Mohd. Jad Al-Hak vs. Union of India* (Crl. WP No. 60 of 1997), the court held that basic necessities, like food and medical care, must be provided while in detention.

Forced Repatriation

In the case of *Gurunathan and Others* (WP Nos. 6708 of 1992), the Madras High Court on March 27, 1994, stayed the repatriation process as it was not voluntary. It held that when there is an international organisation to ascertain the voluntariness of consent it is not for the court to decide whether the consent was voluntary or not. It also directed the government to transmit this order in Tamil to the camps as well as an order that refugees will not be sent back against their will.

Deportation on Grounds of National Security and Criminal Activities

The courts have ruled that refugees can be deported on the grounds of national security. In *Mohammed Sadiq vs. Government of India* (Civil Rule Writ No. 405/98), the court allowed the deportation of refugees under the Foreigners Act of 1946 if they were found indulging in activities undesirable and prejudicial to the security of India. In *Khadija vs. Union of India* (Crl. WP No. 658 of 1997), the High Court of Delhi in New Delhi ruled that international law and conventions cannot be applied to refugees indulging in criminal activities, and consequently, they can be repatriated or deported. However, since the petitioner had approached UNHCR for third-country settlement, he was given a time of four weeks to seek asylum in a third country.

Right to Leave (Return)

The court has upheld a refugee's right to leave the country. In *Nuang Maung Mye Nyan vs. Government of India* (CWP No. 5120/94) and *Shar Aung vs. Government of India* (Gl. WP No. 110

of 1998), the courts ruled that even those refugees against whom cases were pending for illegal entry should be provided exit permits to enable them to leave the country for third-country resettlement.

Application of International Laws for the Protection of Refugees

In *Ktaer Abbas Habib Al Qutafi vs. Union of India* (CA 3433 of 1998), the High Court of Gujarat in Ahmedabad summarised the principles that have emerged from Indian judicial precedents. This included conformity with international conventions and treaties. Although not enforceable, the government is obliged to respect them, but the power of the government to expel a foreigner is still absolute. Meanwhile, Article 21 guarantees the right to life for non-citizens. International covenants and treaties which effectuate these fundamental rights can be enforced. The principal of non-refoulement is encompassed in Article 21 so long as it is not prejudicial to national security. Under Articles 51(c) and 253, international law and treaty obligations are to be respected as long as they are consistent with domestic law.

India's Perception Of Refugee Law

Throughout our 5000 years old known history we have always welcomed refugees with open arms and given them a place of honour and dignity in our society. For instance, the Parsis came to India 1200 years ago because they were persecuted in Persia due to religious bigotry, and since then they have lived with honour and dignity in our country. The Jews came to India 2000 years ago because they were persecuted by the Romans, and for these many years Jews have lived in India with honour and dignity and have never faced persecution in India. Of course most of these Jews have now migrated to Israel, not because of persecution but because they thought they had better opportunities in Israel. We have Armenians living in India for centuries. We have Syrian Christians who came to India in the fourth century A.D. because they were persecuted in Syria, and ever since they have lived with honour and dignity in our country. No one was ever turned away from the Indian shores.

There is an interesting story of the first batch of Parsi immigrants mentioned earlier came from Persia to India 1200 years ago. Their leader was brought before the Indian king who

asked how it could be assured that the immigrants would not create problems in India. The Parsi leader requested for a glass of milk and some sugar. When that was brought, he put the sugar into the milk, stirred it, and asked the Indian king to taste some of the milk. The king found it sweet. The Parsi leader then said: "Your Majesty, far from creating problems for your people we will be like that sugar. The sugar has disappeared, but it has sweetened the milk. Similarly, we will get assimilated into your country, and make it more prosperous." Indeed, Parsis and others who came as refugees to our country have contributed significantly to our culture and progress.

This being our historical tradition I would now like to speak about the present position of refugees and refugee law in India.

A peculiar situation is prevailing in India in this connection. While the Executive branch of the Indian state does not recognize refugees or refugee law, the judicial wing of our state does recognize refugees and refugee law to a certain extent. This needs to be explained.

The Indian government has not signed the 1951 Refugee Convention or the 1967 Protocol, and the reason is probably due to our financial constraints. India has a huge population of over a billion people, half of whom are illiterate and living below the poverty line in almost sub-human conditions, without proper food, education, employment, medical care, housing, etc. Thus half of our own people are like refugees. How then can we be expected to look after other refugees? After all, signing the Refugee Convention requires a country signing it to provide employment, food, housing, medical care, education etc. to refugees. How can we do that when we cannot provide these necessities to 500 million of our own people? India is a poor country with limited resources, and I hope the world community will understand our difficulties in this connection.

I would also like to mention that the Indian judiciary does recognize refugees and refugee law to a certain extent. I would like to inform you that the Indian judiciary is very independent. It is not subordinate to our government, and it often censures the government. The Indian judiciary has been playing an activist and creative role in recent years. In particular, the Indian judiciary has

introduced refugee law into our legal system through the back door, as it were, since the front door has been shut by the executive.

The method adopted by the judiciary is by creative interpretation of Article 21 of the Indian constitution which guarantees the right to life and liberty to all persons and not merely to citizens. In the Indian constitution there is a chapter on Fundamental Rights (Part III) which is similar to the Bill of Rights in the U.S. constitution. Some of these fundamental rights are available only to citizens while others are available to all persons. Refugees may not be citizens but they are certainly persons, and hence they are entitled to the provisions of Article 21.

The Indian Supreme Court has interpreted the word 'life' in Article 21 to mean not merely an animal life but a dignified life, and hence refugees being persons, are also entitled to the same.

There are several decisions of the Supreme Court of India and the High Courts where refugees have been given protection by evoking Article 21 of the Constitution. The leading case is of the *Chakma Refugees, National Human Rights Commission versus State of Arunachal Pradesh*. In this decision the Supreme Court held that Chakma Refugees who had come from Bangladesh due to persecution (when Bangladesh was under Pakistani Rule) cannot be forcibly sent back to Bangladesh as they may be killed there and thus they would be deprived of their right under Article 21 of the Constitution. There are various other decisions of our courts also in this connection. Despite the fact that the Indian government has not signed the Refugee Convention, the Indian judiciary is giving protection to refugees in the above manner.

We would like to see advice and suggestion from IARLJ, UNHCR and other bodies and jurists to help us in the further development of refugee law in India.

Burmese Refugees in the Northeast Region of India

Burmese refugees in the northeastern region of India deserve greater attention, and their plight, which is worse than any other refugee situation in India, needs to be addressed with more concern. Not because their numbers are large or they have political significance, but precisely because of their small numbers and political insignificance. Human misfortunes become lighter when

recognized and sympathies are expressed. Tragedy borne in oblivion is suffering multiplied. The case of Burmese refugees in the Northeast is a classic example of this phenomenon.

India and Burma share a long international border, much of which is porous. As a result, there has always been unrestricted trans-border movement of people from both sides, due to ethnic contiguity and social bonds, besides economic interdependence that had evolved before history separated India and Burma. The drawing of the Indo-Burma border was done in utter disregard of local ethno-social and economic affinities with villages and even homes split into Indian and Burmese halves. As a result, ethnic communities like the Konyak-Naga tribe in the Nagaland-Burma border region, Kukis in the Manipur-Burma border region, and Chin and Reang tribals in the Mizoram sector, etc. have been separated against their will and in disregard of socio-economic cohesion. Consequently, they ended up becoming insignificant minorities in both countries.

When the Burmese government under Ne Win launched their programme of Burmanization in 1967, the local name in the region being Operation Khadawmi, entire villages of these communities were served evacuation notices requiring them to vacate their homes within 48 hours. They were told that they could take whatever they could manage to carry and not make further claims to their land and property thereafter. This drive was carried out on the basis of their possession or otherwise of a National Identity Card which was introduced some two years earlier and issued arbitrarily on payment of huge bribes, which most of them could not afford. In the process, some 15,000 Konyak-Nagas, 20,000 Kukis and 17000-20000 Chin and Reang tribals were driven out into the bordering States of Nagaland, Manipur and Mizoram respectively.

This forcible evacuation was heightened after the Democratic uprising in Burma in 1988. This time the pretext was that they were colluding with the Democracy activists. The numbers were smaller than in 1967-69, but included other Burmese groups, e.g., students and National League for Democracy (NLD) activists of Burmese ethnicity, Kachin and Shan student activists, and members of various minority insurgent groups in Burma. Except for the

few luckier refugees who managed to reach Delhi where they were given recognition, status and aid by the UNHCR, the others suffered in oblivion.

Neither the State governments nor the Government of India gave them any recognition or relief, nor did they allow the UNHCR any access into the region. They were forced to make do with whatever little aid could be generated locally and live in hutments erected in haste. Health, nutrition, education, relief, and repatriation, etc., which are important rights of refugees elsewhere in the world do not apply to them or benefit them.

Jobless and hungry, with no governmental or international efforts to remedy their plight, the youth in these refugee communities become easy recruits for various insurgent organizations operating in the region. Secondly, some of them, especially women, resort to smuggling as it provides a lucrative income. The legalization of the Indo-Myanmar trade severely affected them economically, at least on the short-term in the absence of any alternative to employment. Thirdly, some among them took to drugs and arms trafficking across the border which is the other 'get-rich-quick' formula available to them in the circumstances. Thus, unintended, the refugees in the Indo-Myanmar border have become agents of factors antithetical to the national interests of both countries.

The absence of any national legislation on refugees is primarily responsible for the plight of these refugees, and for threats to national security as a consequence thereof. Much of this human tragedy and its undesirable spin-offs could have been avoided had there been an effective national law on refugees.

Refugee in India

India has seen large influx of refugee populations throughout history.

Refugees from Greater Iran

According to Zoroastrian legend, a few centuries after the conquest of the Sassanid state and the subsequent collapse of Zoroastrianism as a state-sponsored religion, at least one group of Zoroastrians eventually migrated to what is now the Indian state of Gujarat to maintain their Zoroastrian religious tradition.

Although this 16th/17th century legend is taken at face value by the majority of the Parsis, persecution was not yet a significant issue at the time of migration (11th century at the latest). Given that the same legend observes that they migrated from Sanjan (in present-day Turkmenistan), the decline of silk road trade in favour of sea-route trade makes it equally likely that their immigration was economically motivated.

Although isolated groups of Zoroastrians may be presumed to have immigrated between the 12th and 16th centuries, due to persecution (for instance, the Mughal emperor Akbar encouraged relocation of skilled Iranians—irrespective of their religion). Immigration of Zoroastrians for socio-religious reasons is only again documented during Iran's Qajar era (1794–1925) when persecution of non-Muslims was rampant and by which time the Indian Zoroastrians had established special funds to assist their Iranian co-religionists. The descendants of these newer immigrants are known as Iranis.

Partition of India

Massive population exchanges occurred between the two newly-formed nations in the months immediately following Partition. Once the lines were established, about 14.5 million people crossed the borders to what they hoped was the relative safety of religious majority. Based on 1951 Census of displaced persons, 7.226 million Muslims went to Pakistan from India while 7.249 million Hindus and Sikhs (and very small amounts of Muslims) were forced to move to India from Pakistan immediately after partition. About 11.2 million or 78% of the population transfer was on the west, with Punjab accounting for most of it; 5.3 million Muslims moved from India to West Punjab in Pakistan, 3.4 million Hindus and Sikhs were moved from Pakistan to East Punjab in India; elsewhere in the west 1.2 million moved in each direction to and from Sind. The initial population transfer on the east involved 3.5 million Hindus moving from East Bengal to India and only 0.7 million Muslims moving the other way.

Tibetan refugees

Following in the footsteps of the 14th Dalai Lama more than 150,000 Tibetan refugees have fled to India during the past 50 years. He left with his initial entourage in 1959, following an abortive uprising of disputed motivations. He was followed by about 80,000 Tibetan refugees. Jawaharlal Nehru, the then Indian Prime Minister, agreed to provide all assistance to the Tibetan refugees to settle in India until their eventual return). 120,000 refugees remain in India today. The Tibetan diaspora maintains a government in exile in Himachal Pradesh, which coordinates political activities for Tibetans in India.

In 1960, the Government of Mysore (as Karnataka state was called at that time) allotted nearly 3,000 acres (12 km²) of land at Bylakuppe in Mysore district in Karnataka and the first ever Tibetan exile settlement, Lugsung Samdupling came into existence in 1961. A few years later another settlement, Tibetan Dickey Larsoe, also called TDL, was established. This was followed by the establishment of three more settlements in Karnataka state making it the state with the largest Tibetan refugee population. Rabgayling settlement was created in Gurupura village near Hunsur,

Dhondenling was established at Oderapalya near Kollegal and Doeguling settlement came into being at Mundgod in Uttara Kannada district, all in Karnataka. The Bir Tibetan Colony was established in Bir, Himachal Pradesh. Other states have provided land for Tibetan refugees. The Government of India built special schools for Tibetans that provide free education, health care and scholarships for those students who excel in school. There are a few medical and civil engineering seats reserved for Tibetans. Tibetans live in India with a stay permit which is processed through a document called Registration Certificate (RC). It is renewed every year, or half-year in some areas. Every Tibetan refugee above the age of 16 must register for the stay permit. RCs are not issued to new arrival refugees. The Indian Government also issues "Yellow Books" after one years' processing with a RC, which allow Tibetans to travel abroad which is an Identity Certificate.

Refugees from East Pakistan and Bangladesh

During the Bangladesh Liberation War, the Bangladesh-India border was opened to allow Bengalis fleeing genocide by the Pakistan Army's SSG units safe shelter in India. The governments of West Bengal, Bihar, Assam, Meghalaya and Tripura established refugee camps along the border. As the massacres in East Pakistan escalated an estimated 10 million refugees fled to India causing financial hardship and instability in that country as well as regional conflicts in the north-eastern states.

Afghan refugees

More than 60,000 Afghan refugees came to India in the years following the 1979 Soviet invasion of Afghanistan which India supported. The Indian government does not officially recognise them as refugees, but has allowed the UNHCR to operate a programme for them.

Sri Lankan Tamil people

There are more than 100,000 Sri Lankan Tamils in India, most of whom migrated during the rise of militancy in Sri Lanka. Most Sri Lankans are settled in refugee camps in Tamil Nadu. Chennai, Tiruchirappalli, Coimbatore and Bangalore have significant Sri Lankan Tamil populations.

Tibetan Diaspora

The Tibetan diaspora is a term used to refer to the communities of Tibetan people living outside the People's Republic of China. Tibetan emigration happened in two waves: one in 1959 following the 14th Dalai Lama's self-exile in India, and the other in the 1980s when Tibet was opened to trade and tourism. The third wave continues from 1996 to today. Not all emigration from Tibet is permanent; today some parents in Tibet send their children to communities in the diaspora to receive a traditional Tibetan education. In the 2009 census, Tibetans in exile registered are about 128,000, with the most numerous part of the community living in India, Nepal, and Bhutan. However, in 2005 and 2009 an estimation at up to 150,000 was given.

Origins and numbers

The Central Tibetan Administration (CTA) provides a Green Book -a kind of Tibetan identity certificate-to Tibetan refugees. Based on a CTA survey from 2009, 127,935 Tibetans were registered in the diaspora: in India 94,203; in Nepal 13,514; in Bhutan 1,298; and in rest of the world 18,920. However, their number is estimated at up to 150,000, as mentioned by both Edward J. Mills et al. in 2005 and by the 14th Dalai Lama in 2009. The larger of the other communities are in the USA, Canada, the United Kingdom, Switzerland, Norway, France, Taiwan and Australia.

First wave

During the 1959 Tibetan uprising, the 14th Dalai Lama and some of his government fled to India. From 1959 to 1960, about 80,000 Tibetans followed the Dalai Lama to India through the Himalayas. Continued flights, estimated in the numbers of 1,000 to 2,500 a year, increased these numbers to 100,000. The movement of refugees during this time is sometimes referred to as an "exodus", as in a United Nations General Assembly resolution in 1961 that asserted that the presence of Tibetan refugees in neighboring countries was "evidence" of rights abuses in Tibet.

Second wave

After the opening of Tibet in the 1980s to trade and tourism, a second Tibetan wave of exile took place due to increasing political

repression. From 1986 to 1996, 25,000 Tibetans joined and increased by 18% their exiled community in India. This movement of refugees during this second wave is sometimes referred to as a "second exodus".

According to a US cable put out by WikiLeaks, from 1980 to November 2009, 87,096 Tibetans arrived in India and registered at the Dharamsala reception center, whereas 46,620 returned to Tibet after a pilgrimage in India. Most of those staying are children to attend Tibetan Children's Villages school.

Present emigration

A 2008 documentary directed by Richard Martini claimed that 3,000–4,500 Tibetans arrive at Dharamsala every year. Most new immigrants are children who are sent to Tibetan cultural schools, sometimes with the tacit approval of the Chinese government. Many political activists, including monks, have also crossed over through Nepal to India. Significant cultural gaps exist between recent Tibetan emigrants (*gsar 'byor pa*; "newcomer") and Indian-born Tibetans. The more established Tibetans in diaspora reject recent immigrant Tibetans who watch Chinese movies, sing Chinese music, and can speak Mandarin, who are then alienated from the exile community. Newcomers express frustration that the government-in-exile wants to hear only "bad things" about Chinese rule in Tibet, and a lack of economic opportunity in Dharamsala.

In India

Organisations

The main organisation of the Tibetan diaspora is the Central Tibetan Administration of the 14th Dalai Lama based in the McLeod Ganj suburb of the city of Dharamsala in India. The CTA maintains Tibet Offices in 10 countries. These act as *de facto* embassies of the CTA, offices of culture and information and effectively provide a kind of consular help to Tibetans. They are based in New Delhi, India; New York, USA; Geneva, Switzerland; Tokyo, Japan; London, UK; Canberra, Australia; Paris, France; Moscow, Russia; Pretoria, South Africa; and Taipei, Taiwan. The Tibetan diaspora NGOs deal with the cultural and social life of the diaspora, the preservation of cultural heritage, and the promotion of political Tibetan independence.

Education

The Central Tibetan Schools Administration with a seat in New Delhi is an autonomous organization established in 1961 with the objective to establish, manage and assist schools in India for the education of Tibetan children living in India while preserving and promoting their culture and heritage. According to information on its own website, as of 2009 the Administration was running 71 schools in the areas of concentration of Tibetan population, with about 10,000 students on the roll from pre-primary to class XII, and with 554 teaching staff. According to the information on the website of the CTA, as of 2009.01.13. there were 28 CTSA schools whose enrollment was 9,991 students.

In 2009, The Tibetan Children's Villages established the first Tibetan higher college in exile in Bangalore (India) which was named "The Dalai Lama Institute for Higher Education". The goals of this college is to teach Tibetan language and Tibetan culture, but also science, the arts, counseling and information technology.

Migration from settlements in India

Migration of young people from Tibetan settlements in India is a serious cause of concern as it threatens Tibetan identity and culture in exile with marginalization. According to Tenzin Lekshay, most exile settlements are guarded by old aged people, some established schools in the settlements are on the verge of closing for lack of pupils, and graduates are scattering to Indian cities because of the lack of employment opportunities in the community.

According to Nawang Thogmed, a CTA official, the most oft-cited problems for newly migrating Tibetans in India are the language barrier, their dislike for Indian food, and the warm climate, which makes Tibetan clothing uncomfortable. Some exiles also fear that their Tibetan culture is being diluted in India. Indian television runs in Hindi and English.

In Bhutan

Few Tibetans settled in Bhutan after 1959, as the country was used mainly as a transit route to India. However, in 1961, following growing tensions between China and India, India sealed

its northern border with Bhutan, prompting Bhutan to arrange an emergency meeting with the Government of India (GOI) and the CTA to deal with the Tibetans stuck in the country. The government of Bhutan agreed to take in 4000 settlers, although ordinary Bhutanese became increasingly resentful of the Tibetan immigrants because of their refusal to assimilate into Bhutanese culture. In 1974, 28 Tibetans, including the representative of the Dalai Lama in Thimphu, were arrested and accused of a conspiracy to assassinate King Jigme Singye Wangchuck. When the CTA refused to provide evidence of their innocence, relations between Bhutan and Dharamshala soured, and in 1979, the Government of Bhutan announced that any Tibetan in the country that did not take Bhutanese citizenship would be repatriated back to China. Despite the CTA's opposition, 2300 Tibetans applied for citizenship; most of the remainder resettled in India.

In Europe and North America

Tibetans in Europe and North America are not as politically active or unintegrated into the host society as Tibetans in India, because they do not live in concentrated communities, and are educated in local schools instead of living under a special Tibetan jurisdiction as Tibetan Indians do. In Europe, Tibetans have been received more positively than other immigrants to Europe, and are stereotyped as spiritual and victims. Politically, organizations such as the Tibetan Youth Association in Europe attempt to cultivate a Tibetan identity for Tibetans in Europe. However, many Tibetan youths in Europe cannot speak a Tibetan language and do not feel they belong to a wider Tibetan community.

Refugee Protection in India

South Asian refugees who have fled to India face serious problems in their daily lives. From forcible repatriation to starvation, refugees find themselves on the edge, clawing for mere survival. India has provided shelter to these refugees for centuries for both geopolitical and socioeconomic reasons. Political upheaval occurring in unstable countries bordering India often created political upheavals, forcing citizens to seek refuge elsewhere. Additionally, ethnic and religious persecution forced minorities to join similar peoples in India's multi-ethnic and multilingual

society. Better opportunities to start afresh and improved living conditions also contributed to India's appeal.

However, little, if any, information is available to the international community or to the Indian people about the plight of these refugees once they reach India. This article aims to inform the world about the condition of South Asian refugees in India and draw the Indian Government's attention to the need for legislation to protect refugees and asylum seekers. Moreover, this article will examine the role of inter-governmental organizations such as the United Nations High Commissioner for Refugees (UNHCR) and domestic NGOs such as the South Asia Human Rights Documentation Centre (SAHRDC) in New Delhi.

Applicable Laws

The refugee problem was acknowledged as having international dimensions and requiring global cooperation as far back as 1921-22 in the aftermath of the First World War, the break up of the Austro Hungarian empire and the Russian revolution. However, real movement to protect refugees began only with the 1948 Universal Declaration of Human Rights which proclaimed basic rights for all human beings irrespective of their nationality or citizenship. This declaration was an important first step since refugees face unique hardships and are particularly vulnerable in foreign countries. It is therefore incumbent upon the international community to protect their rights both in countries of origin and asylum.

A myriad of specialized and regional human rights instruments have sprung from the foundation of the International Bill of Human Rights. The non-derogable rights enshrined in the Covenants such as Article 6 of the International Covenant on Civil and Political Rights (ICCPR) are also applicable to the refugees. The principle of non-refoulement was applied where there was fear of torture or violation of right to life of the refugees. Nonetheless, the foremost authority on refugee law is the 1951 Convention relating to the Status of Refugees, known simply as the Refugee Convention, which codified a very precise definition of "refugee" (1) found in the 1951 Refugee Convention. According to Article 1 of this Convention, a refugee is someone who, "owing to a well-founded

fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality."

More contemporary instruments have advanced beyond this limited and legalistic definition by acknowledging civil disturbances and human rights abuses as valid claims for refugee status.

None of the South Asian countries are party to the 1951 Convention Relating to the Status of Refugees which currently is ratified by 134 nations. This may reflect the unwillingness of South Asian governments to submit to international scrutiny. Though India is not a party to the Refugee Convention, the general principle prohibiting forced repatriation called non-refoulement has risen to the level of customary law, such that they bind even non-signatories.

Since the matter (entry and regulation of aliens) falls under the Union List, the Central Government is empowered to deal with refugees. Traditionally, the Union Cabinet has made reactive decisions with each particular refugee influx, often taking action only when the particular refugee influx went beyond the control of the Border Security Force, and the matter became political. India thus lacks a cohesive national policy for handling refugee inflows. The lack of a national Indian policy limits the ability of the State governments and Border Security Force to deal with refugees instantly, resulting in mass rejections at the frontier while policy directions are awaited or non-recognition of refugees sneaking into Indian territory.

India's Refugee Policy

The juridical basis of the international obligations to protect refugees, namely, non-refoulement including non-rejection at the frontier, non-return, non-expulsion or non-extradition and the minimum standard of treatment are traced in international conventions and customary law. The only treaty regime having near universal effect pertaining to refugees is the 1951 Refugee Convention and its 1967 Protocol on the Status of Refugees which is the magna carta of refugee law. Since India has not yet ratified or acceded to this regime its legal obligation to protect refugees

is traced mainly in customary international law. An examination of this aspect raises the basic question of relation and effect of international law with the Indian municipal law.

The Constitution of Indian contains just a few provisions on the status of international law in India. Leading among them is Article 51 (c), which states that

"the State [India] shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another."

Leaving a little confusion, this provision differentiates between international law and treaty obligations. It is, however, interpreted and understood that "international law" represents international customary law and "treaty obligations" represent international conventional law. Otherwise the Article is lucid and directs India to foster respect for its international obligations arising under international law for its economic and social progress. Article 51 (c) is placed under the Directive Principles of State Policy in Part IV of the Indian Constitution, which means it is not an enforceable provision. Since the principle laid down in Article 51 is not enforceable and India has merely to endeavor to foster respect for international law, this Article would mean *prima facie* that international law is not incorporated into the Indian municipal law which is binding and enforceable. However, when Article 51(c) is read in the light of other Articles and judicial opinion and foreign policy statements, it suggests otherwise.

Before India became independent, the Indian courts under British rule administered the English Common law. They accepted the basic principles governing the relationship between international law and municipal law under the common law doctrine. Under the English common law doctrine, rules of international law in general were not accepted as part of municipal law. If, however, there was no conflict between these rules and the rules of municipal law, international law was accepted in municipal law without any incorporation. Indeed, the doctrine of common law is specific about certain international treaties affecting private rights of individuals. To implement such treaties, the doctrine requires modification of statutory law and the adoption of the enabling legislation in the form of an Act of Parliament.

These English common law principles are still applicable to India even after its independence, by virtue of Article 372 of the Constitution, which says that: "all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."

This common law practice has been followed by the Indian executive, legislature and judiciary even after the independence of India. For instance, until the specific legislations were adopted India observed the international customary rules regarding immunity from domestic jurisdiction and law of the sea particularly with regard to the high seas, maritime belt, and innocent passage.

Confirming the common law principle relating to the specific incorporation of certain treaties, Article 253 provides that: "Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

This Article implies that whenever there is a necessity to incorporate international obligations undertaken at international level or under international instruments into municipal law, the Parliament is empowered to do so. This is also acknowledged by the Indian judiciary as early as 1951. While delivering the judgement in the *Birma v. The State of Rajasthan*, the Rajasthan High Court, quoting the English common law principle, observed that certain treaties such as those affecting private rights must be legislated by Parliament to become enforceable.

The judicial opinion is that rules of international law and municipal law should be construed harmoniously, and only when there is an inevitable conflict between these two laws the municipal law should prevail over international law. Against this backdrop when one examines the binding force of international refugee law on India and its relations with Indian municipal law, one can conclude that as long as international refugee law does not come in conflict with Indian legislations or policies on the protection of refugees, international refugee law is a part the municipal law. With this conclusion one hopes to examine the question as to

whether international refugee law is in conflict in any way with Indian legislations or, in the absence of such legislations, with Indian attitude and policy on refugees.

India never had a clear policy as to whom to grant refugee status. When the question of adoption of a Convention and establishment of an agency for the international protection of refugees came for discussion in the Third Committee of the UN General Assembly, in 1949, the Indian delegation expressed its views on these issues. Mr Mujeeb, a member of the delegation, told the Third Committee that instead of establishing a new organization for the protection of refugees, the International Organization for Refugees should be maintained and then the Third Committee should address itself to the drafting of the Convention on the legal protection of refugees. Again in the same Committee another member of the Indian delegation, Mrs Kripalani said that the Indian Government did not want to shrink from any of its international responsibilities, and it wished to take part in any humanitarian work undertaken by the UN.

She further said that in spite of its difficulties, India would have voted for the establishment of a High Commissioner's Office if it had been convinced that there was a great need to set up an elaborate international organization whose sole responsibility would be to give refugees legal protection. It was believed that at a time when its own refugees were dying of starvation, India felt obliged to vote against all the resolutions submitted, and hoped that its stand would not be misinterpreted. After the Convention was adopted India did not ratify or accede, and the reasons for not doing so are never disclosed except that it was stated in the Parliament by the former External Affairs Minister, Mr B R Bhagat that since the Government had come up with certain basic difficulties, the implications, if India ratifies these Conventions, were under study. In other words, India's initial stand on the treaty regime of the refugee law was declared to be a subject of review.

On the question of admission and non-refoulement, however, the Indian attitude is rather bleak. Even though India accepted the principle of non-refoulement as including non-rejection at the frontier under the "Bangkok Principles 1966" it did not observe

that principle in its practice. Ignoring the fact that refugees leave their homes suddenly due to threats to their life and liberty, and by the nature of their flight they are unable to get the necessary travel documents from their home States, India deals with the question of admission of refugees and their stay until they are officially accorded refugee status, under legislations which deal with foreigners who voluntarily leave their homes in normal circumstances.

The chief legislation for the regulation of foreigners is the Foreigners Act, 1946 which deals with the matters of "entry of foreigners in India, their presence therein and their departure therefrom". Paragraph 3(1) of the Foreigners Order, 1948 lays down the power to grant or refuse permission to a foreigner to enter India, in the following terms:

"No foreigner shall enter India—

- (a) otherwise than at such port or other place of entry on the borders of India as a Registration Officer having Jurisdiction at that port or place may appoint in this behalf; either for foreigners generally or any specified class or description of foreigners, or
- (b) without leave of the civil authorities having jurisdiction at such port or place."

This provision lays down a general obligation that no foreigner should enter India without the authorization of the authority having jurisdiction over such entry points. It is mainly intended to deal with illegal entrants and infiltrators. In case of persons who do not fulfil certain conditions of entry, the sub-para 2 of the Para 3 of the Order authorizes the civil authority to refuse the leave to enter India. The main condition is that unless exempted, every foreigner should be in possession of a valid passport or visa to enter India.

As observed earlier, if refugees contravene any of these provisions they are liable to prosecution and thereby to the deportation proceedings. The practice shows that when the courts were approached by many Afghans, Iranians and Burmese against whom the Government of India initiated deportation proceedings under Sections 3 and 14 of the Foreigners Act, 1946 for their illegal

entry into India, courts responded positively by accepting their plea that if they were returned they would face threats to their life and liberty and India had a long tradition of extending protection to many refugees. In the fitness of things, the courts have initially stayed the deportation proceedings.

As for the minimum standard of treatment of refugees, India has undertaken an obligation by ratifying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to accord an equal treatment to all non-citizens with its citizens wherever possible. India is presently a member of the Executive Committee of the UNHCR and it entails the responsibility to abide by international standards on the treatment of refugees.

As early as 1953 the then Prime Minister of India, Mr Jawaharlal Nehru informed Parliament that India would abide by international standards governing asylum by adopting similar, non-binding domestic policies. Since then, the Indian Government has consistently affirmed the right of the state to grant asylum on humanitarian grounds. Based on this policy, India has granted asylum and refugee status to Tibetans and Tamils from Sri Lanka. The 1971 refugees from Bangladesh were officially called "evacuees", but were treated as refugees requiring temporary asylum. No other community or group has been officially recognized as 'refugees'. India claims to observe the principles of non-refoulement and thus never to return or expel any refugee whose life and liberty were under threat in his/her country of origin or residence.

Refuting this claim, Indian human rights groups do point to specific cases of refoulement, where clear evidence and refugee testimony prove that forcible repatriation has taken place. A closer examination of India's refugee policy reveals a number of intricate problems.

Refugee Categories

The plight of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the United Nations High Commissioner for Refugees (UNHCR). Below is brief definition of the three primary categories followed

by a description of the living conditions faced by each refugee category:

- I. Refugees who receive full protection according to standards set by the Government of India;
- II. Refugees whose presence in Indian territory is acknowledged only by UNHCR and are protected under the principle of non-refoulement;
- III. Refugees who have entered India and have assimilated into their communities. Their presence is not acknowledged by either the Indian Government or UNHCR.

Category I Refugees-The Tamils

Tamil refugees have fled to India in several waves. When the conflict in Sri Lanka between the Sinhalese majority community and the Tamil minority took a violent turn in 1983, the Tamils fled to India on their tiny boats from the northern peninsula of Sri Lanka. During the first wave 134,053 Tamil refugees are reported to have come to India between 1983-1987. Following the 1987 Accord with Sri Lanka and the Indian Government, which sought to create a power sharing agreement between the two warring communities, the Indian Government repatriated 25,885 Tamil refugees from 1987-1989. India had to stop the repatriation program in 1989 when its shores were flooded again with another refugee wave fleeing Sri Lankan violence.

During this second phase of Tamil flight in search of a safe haven (1989-1991), 122,037 Tamil refugees reportedly reached India but 113,298 of them are held in 298 camps along the coastal Indian states of Tamilnadu and Orissa. Once again, the Indian Government repatriated a large number of Tamil refugees with the cooperation of UNHCR. About 31,000 refugees have been returned to Sri Lanka between 1992-1995. As a result of these repatriations, roughly half of the original 110,000 refugees remain in Tamilnadu, India. There have been no new returns to Sri Lanka from Tamilnadu since the breakdown of peace talks and resumption of hostilities between the Liberation Tigers of Tamil Eelam (LTTE) in 1996.

Though the refugees were originally welcomed to Tamilnadu, the assassination of Mr Rajiv Gandhi in May 1991 by a suspected member and suicide bomber of the Liberation Tigers of Tamil

Eelam turned public sentiment and government authorities against the Tamil refugees. Soon after Rajiv Gandhi's death, India began a program of "voluntary" repatriation, under which more than 23,000 refugees were repatriated without international supervision. It is now apparent that most of those refugees were coerced in various overt and covert ways to leave the refugee camps in Tamilnadu.

Today, those remaining Tamils, suffer from poor living conditions in India. Camp conditions vary from district to district, depending on the sympathies of local officials. The camps closest to Madras are, for the most part, well-maintained, while in Pooluvapatti Camp near Coimbatore, 4700 refugees use eight latrines. Accumulated waste, cramped quarters, lack of electricity and poor sanitation all contribute to the miserable state of the Camps.

Additionally, the health of the refugees has deteriorated significantly since NGOs were banned from entering the camps. Previously, NGOs had been allowed to provide primary health care and supplement meager monthly stipends and food rations such as rice, sugar and kerosene provided by the Government of Tamilnadu. Now, without supplements from NGOs, most refugees must spend what little money that they have on expensive open market food because payment of the stipend rarely coincides with the arrival of subsidized rations. Also, camp officials are known to use the stipends and rations as bargaining chips, telling the refugees that they will only receive their stipends if they agree to leave the country.

Additionally, the Indian Government restricts the movement of the Tamils in Tamilnadu. Members of the police and notorious "Q" branch of the state intelligence agency are stationed at the gates of many of the camps, including the camp in Coimbatore, Tamilnadu and carefully monitor their activities. One government official claimed that the police protect the refugees, but the Tamils themselves believe that the guards are more concerned with controlling their movement. Camp authorities employ indirect measures to restrain the Tamils. Refugees in the Poolvapatti, Tamilnadu camp were told by the Village Administrative Official that they could leave the camp to visit other areas if they wanted

to, but that their daily allowances would be cut if they did. Obtaining permission to leave the camp often depends on the vagaries of the camp authorities. Moreover travel restrictions make visits to the offices of the UNHCR or the Sri Lankan Deputy High Commissioner in Madras virtually impossible for refugees confined to outlying camps.

In addition to the regular camps, the State Government has converted jails into so-called Special Camps to hold Tamils with suspected terrorist links. Since 1990, hundreds of refugees have been detained in these facilities. The SAHRDC and the National Human Rights Commission of India have compiled numerous reports of non-militant refugees, particularly young Tamil males, being arrested and detained under the Foreigners Act. Many of these individuals have been languishing in detention facilities for more than three years and still do not know why they were arrested. When pressed, the government justifies these Special Camps as necessary measures to deal with alleged Liberation Tigers of Tamil Eelam terrorists.

On the Sri Lanka repatriation, UNHCR states that, "Between 1992 and 1 January 1996, 54,059 persons returned from India and benefited from UNHCR's Special Program in Sri Lanka. Of this number, 7464 persons were staying in government centres as of 30 April 1996, while the remainder had returned to their home areas. A total of 10,013 persons returned in the first quarter of 1995. The UNHCR statistics on the voluntary repatriation of refugees from India are not supported by evidence. The UNHCR has allegedly connived with the Government of India in hastily repatriating the Sri Lankan Tamil refugees. Many of these refugees who could not reach their native places but live in the refugee camps back in Sri Lanka are fleeing back to India. By October 1996, 2000 reached the Indian State of Tamilnadu to seek refuge again.

As a part of it's protection mandate, UNHCR is expected to share the information on the conflict situation in the country of origin but failed to do so for the last five years to the Tamil refugees. Rather, it was informing the refugees that "certain liberated zones" were available for the refugees to return to. Refugees shifted to the Pesalai camps in Sri Lanka from India in 1994 could not go to their places languished in UNHCR transit

camps till 1996 when conflict broke out. Many of them returned to India.

These are some 56,000 Sri Lankan Tamil refugees accommodated in Indian camps and another further 45,000 reportedly living outside the camps. A court order forced the government to halt the repatriation program and gave the UNHCR the right to interview the returnees. However, the UNHCR is not allowed access to the camps and cannot speak to the refugees until they have already consented to leave India. It is clear that the token presence of UNHCR in Madras only provides respectability to what is essentially a program of involuntary repatriation.

Following up on rumors of forced repatriation and deplorable conditions in the Tamil refugee camps in Tamilnadu, a SAHRDC researcher visited the camps in July 1996 and published a report which details the systematic violations of Tamil refugee rights and the implicit involvement of the Government of India. The Indian Government appears determined to allow conditions to deteriorate to the point where refugees would rather return to the violence of Sri Lanka than stay in the camps.

The fact that the Indian Government has not acceded to the international Refugee Convention has adverse effects upon the Tamil refugees. The Convention established basic rights such as food, water and shelter that the host country should provide its refugees. Since India is not a signatory, Tamil refugees are subject to the whims of the political party in power. The State Government in Tamilnadu, though originally sympathetic to the refugee's cause, consistently failed to maintain the refugee camps in accordance with well-recognized international standards. Thus, the policies of India and the State of Tamilnadu directly contravene conventional human rights laws as well as customary international law regarding non-refoulement. The SAHRDC recommends that if the Indian Government is serious about maintaining the camps it should allow NGOs to resume their former duties. Furthermore, UNHCR, accustomed to treading lightly in India where it is not an officially recognized UN agency, should arm itself with the international conventions to which it owes its creation and take a more pro-active role in the protection of the Sri Lankan Tamil refugees.

Category I Refugees-The Jumma

The Jumma peoples from the Chittagong Hill Tracts of Bangladesh are another example of category I refugees. The Buddhist Jumma have been fleeing religious harassment from the Muslim Government of Bangladesh. In a country with scarce arable land, the Bangladesh Government has been trying to settle the fertile Chittagong Hill Tracts. Since 1978, the Indian Government has provided temporary shelter for these people in the neighboring Indian states of Mizoram and Tripura. Following a series of massacres by Bangladesh security forces in 1986, nearly 70,000 Jumma refugees sought shelter in six camps established by the Indian Government in Tripura. Their presence in India has been a source of embarrassment for the Bangladesh Government.

As part of its effort to improve relations with Bangladesh in 1992, the Indian Government began to pressurize the Jumma to return to Chittagong Hill Tracts, thus seemingly shifting the status of these refugees from Category I to Category II. The approximation of geo-political and economic relationship caused the change of attitude towards the refugees. As part of its effort to improve relations with its Muslim neighbour, Bangladesh, the Indian Government began to pressure the Jumma to return to the Chittagong Hill Tracts. India has been encouraging "voluntary" repatriation by making living conditions in the Tripura camps untenable. The Government of India has denied food to the Jumma as a means of forcing them to return to their homeland. Ration supplies to the Jumma refugees sheltered in Tripura State have been suspended since mid 1992. SAHRDC most recently received information about the discontinued supply of rice and salt from 21 November 1995 in a fresh attempt to force the refugees out. Food provisions are given in 10 days cycles but the quantity given normally suffices for only eight days. Often, even those meager rations are delayed. A delay of two days means that indigent tribal refugee families must go hungry. Still, delays of over five days in the supply of rations are not uncommon. The Humanity Protection Forum, a Tripura based civil liberties organization reported one week later that hunger had engulfed the Jumma refugee camps and many refugees were facing starvation. Medical facilities and other basic amenities are non-existent.

The State Government of Tripura, in concert with the Central Government of India, also denies educational facilities to Jumma refugee students. This is an element of India's non-violent pressure policy, designed to encourage refugees who want their children to be educated, to return to the Chittagong Hill Tracts as their own risk. The SAHRDC conducted a study on camp conditions in 1993 and 1994 which revealed that the Jumma refugees have been systematically denied access to education.

In 1994, about 5,000 Jumma refugees returned "under duress" to the Chittagong Hill Tracts after bilateral discussions between India and Bangladesh and the responses of SAHRDC to the averments of the Ministry of External Affairs and Ministry of Home Affairs of the Government of India and Tripura State Government submitted to the National Human Rights Commission (NHRC). The NHRC has been inquiring into the alleged forcible repatriation on a complaint filed by SAHRDC. Though the Government of Bangladesh promised to return them to their lands, many are still dislocated. Following the return of this first refugee group in February 1994, human rights groups in Dhaka, Bangladesh conducted a survey indicating that 37 percent of the 42 families interviewed had not reclaimed their original lands. One month later, the Jumma Refugee Welfare Association, after visiting the Chittagong Hill Tracts, reported that more than 103 families had still not received the land they originally left. The Returnee Jumma Refugees 16 Points Implementation Committee states that out of the 1027 families consisting of 5186 individual refugees, 25 returnee Jummas refugees who had earlier been employed in various Government jobs were not reinstated in their previous jobs, 134 returnee Jumma refugee families could not settle in their own lands due to the misappropriation of their lands by the security forces and Bengali illegal settlers and 79 families were not given back their lands as it was under forcible occupation of the illegal settlers from the plains. The Bangladesh Government also registered false cases against 23 returnee refugees.

SAHRDC filed a complaint with the Indian National Human Rights Commission about the involuntary repatriation of the Jumma refugees in 1994. The National Human Rights Commission asked the Ministry of Home Affairs, the Ministry of External Affairs and

the Tripura Government to reply to SAHRDC's allegations of forced repatriation. SAHRDC challenged the statements of the Ministry of Foreign Affairs and the Tripura Government with factual information substantiating its allegations.

More than two years after filing the complaint, the National Human Rights Commission sent a investigation team headed by Mr A Chakraborty, Senior Superintendent of Police to the Jumma refugee camps from 24-28 May 1996 to investigate the allegations of the SAHRDC. The team reported about the shortage of water, inadequacy of accommodation and woefully inadequate medical facilities. The report also pointed out that the scale of rations was meager and its supply was often suspended. During the visit, the team found that many of the tube wells were out of order and that the inmates of the camps were bringing water from far-off places. The camps were also unclean and bore signs of neglect. The report noted that refugee children were suffering from malnutrition, water-borne diseases and malaria, while there was no visible effort to improve their living conditions. The investigation team "attributed the problems faced by the refugees, to the callousness and hostility of the officials towards the refugees, accumulated over the years, as they are not keen to go back".

Although the complaint of SAHRDC relating to the involuntary repatriation of the Jumma refugees in 1994 is still under the consideration of NHRC, the Government of India decided to repatriate 6,172 Jumma refugees without consulting the NHRC. The SAHRDC in a complaint on 7 March 1997 drew the attention of the NHRC about the undue duress being brought to bear upon the refugees. The NHRC failed to take any positive action to ensure voluntary repatriation exposing once again its ineffectiveness on human rights issues having geo-political dimensions.

Category II Refugees

In addition to the refugees under the care of the Government of India, there are about 20,800 Category II refugees comprised of Afghan, Iranian, Somali, Sudanese and Burmese refugees as of 1 January 1996. This includes 19,900 Afghan refugees, 200 Iranian refugees, 300 Somali refugees, 300 Burmese refugees and 100

Sudanese refugees. Their presence in India is acknowledged and protected under the principle of non-refoulement by the United Nations High Commissioner for Refugees. However, the condition of these refugees who receive protection and subsistence allowance from the UNHCR is no better than that of Category I refugees receiving protection from the Government of India.

There have been allegations that the UNHCR in Delhi has been arbitrary in its cancellation of refugees status and allowances for certain individuals. After receiving numerous complaints to this effect, SAHRDC conducted a study of the conditions of refugees protected by the UNHCR in Delhi.

The report "The Status of Refugees under the Protection of the UNHCR in New Delhi", released on 1 May 1995 examined services offered by the UNHCR to refugees in Delhi; the relevance of services available; the accessibility of such services; the UNHCR's services with regards to their attention to refugee rights and human rights and problems faced by refugees in Delhi.

SAHRDC's study investigated the services offered to refugees by the UNHCR in New Delhi including emergency aid, health care facilities, subsistence allowance, lump-sum amount or payments as a means to voluntarily surrender the subsistence allowance that accompanied refugee status, accommodation, employment, vocational training, education, legal aid, counselling, travel documents, resettlement, internal monitoring mechanism of the UNHCR and accessibility to the UNHCR itself in the light of the UNHCR's standard guidelines and in particular its guidelines on the vulnerable groups, women and children.

SAHRDC found that UNHCR's New Delhi office has become a fortress. The services offered by UNHCR were inadequate. The report stated "Communication between refugees and the UNHCR has reached an all time low. SAHRDC has conveyed its concerns over this deterioration of relations to UNHCR officials in New Delhi on more than one occasion. The refugees view the UNHCR officials with suspicion, and do not believe that they have refugee interests at heart. UNHCR officials claim that the global policies of its organization have led to a virtual freeze on the refugee subsistence allowance in India. This has exacerbated resentment and tension in the refugee community. SAHRDC feels that there

is an urgent need for a more positive financial input from the UNHCR headquarters in Geneva".

SAHRDC made recommendations to improve the conditions of the refugees and the report was forwarded to both the New Delhi Office of UNHCR and its headquarters in Geneva. SAHRDC has not received any comments as yet. SAHRDC also has good reasons to believe that the situation has not improved. Meanwhile, in a callous attempt at reduction of the case load, UNHCR arbitrarily terminated the subsistence allowance of over 2000 refugees. Destitution has allegedly led to two suicides in the refugee community. SAHRDC also has specific cases of human rights abuses on the asylum seekers from arbitrariness in determination of refugee status and suspension of subsistence allowance to beating by UNHCR security guards of asylum seekers.

Though the UNHCR is only as effective as the government permits, these actions indicate a general disregard for the plight of the refugees.

Category III Refugees

A large number of ethnic Chin and other tribal refugees have escaped repression from the Burmese military and entered the Indian state of Mizoram. The presence of Chin refugees from the Chin State of Burma, Nagas from Burma, Rakhain refugees from Arakan State in Burma, and ethnic Nepalese of Bhutanese nationality is not acknowledged by the Government of India. The largest among these refugees groups is the Chins, numbering about 40,000. While the Burmese Nagas have sought refuge in the Indian State of Nagaland, the Chins and Rakhains have sought refuge in Indian State of Mizoram.

Though they have generally assimilated into Indian society, their living standards are still poor. They can be described as Category III refugees since neither the Indian Government nor UNHCR recognize their presence. Moreover, the Chin do not receive state assistance or international assistance because of their ambiguous status. They have been left unto themselves in a foreign land where they have no means for survival.

The Mizoram State Government has forcibly repatriated many Chin refugees since 1994. While it was not reported in the press,

a senior official of the Mizoram State Government confirmed to a SAHRDC representative that a large number of Chin refugees indeed had been forcibly returned to Burma by the State Government in 1994.

Role of NGOs

The domestic NGOs and UNHCR are complimentary to each other. In a situation where Government of India denies access to UNHCR and other foreign humanitarian agencies, domestic NGOs play the most crucial role to provide "protection" to the refugees.

The Oslo Declaration on Partnership-in-Action (PARinAC) between the NGOs and the UNHCR provides the basis for cooperation. However, reports of the *Medicins Sans Frontier*, *Holland* and *Human Rights Watch Asia* detail the involuntary repatriation of Rohingya refugees, the report of the *Human Rights Watch Asia* on the involuntary repatriation of the Sri Lankan Tamil refugees, the report of the *South Asia Human Rights Documentation Centre* on the treatment of the urban refugees the UNHCR looks after, makes it evident that UNHCR's role in South Asia has been far from satisfactory. And UNHCR has failed to respond to many of these concerns.

The UNHCR report to the Forty Seventh Session of its Executive Committee is oblivious to the plight of the refugees looked after by the Government of India. The UNHCR objective in India is to create "public awareness of refugee situations and issues in India and promote a legal framework for the protection of refugees". Consequently, UNHCR's present implementing partners neither have any track record of working with the refugees nor anything to do with "protection" of refugees. Refugees do face numerous difficulties from denial of food to the restriction on the freedom of movement. The creation of awareness and promotion of a legal framework as envisaged by the UNHCR is important to create an institutional framework to protect the refugee rights. However, it should not be an excuse for the UNHCR to shirk its responsibilities to provide "protection" to the refugees. Neither can the denial of access by the Government of India be an excuse when the Government of India allows the UNHCR to work with its various partners. The fundamental issue is when the Government of India

gradually repatriates all the refugees under duress as reflected in this article and UNHCR makes living conditions untenable for the urban refugees it looks after in the name of "rationalization of the care and maintenance", a legal framework will have little meaning. The UNHCR has failed to respond to these concerns and attempts to follow up and put the PARinAC process into practice have failed due to the non-cooperation of the UNHCR to protect and promote the rights of the refugees.

Little, if any, information is available to the international community or to the Indian people about the plight of refugees in India. This article aims to keep the world informed about refugees in India; it is also intended to draw the Indian Government's attention to the need for legislation to protect refugees and asylum seekers.

The plight of the refugees irrespective of whether they are looked after either by the UNHCR or the Government of India is abominable to say the least. The condition of the refugees who are not recognized either by UNHCR or the Government of India is the worst.

The lack of legal mechanisms and policies on refugees is one of the fundamental flaws of refugee protection in India. But the courts in India have awarded excellent judgements to abide by international principles on refugee protection including non-refoulement.

However, the cardinal problem arises when both the UNHCR and the Government of India violate their own standards and principles. While it is possible to bring the Government of India under the scrutiny of the quasi-judicial bodies like the National Human Rights Commission and judiciary, there is no such mechanism to scrutinise the United Nations High Commissioner for Refugees in New Delhi. "Official rules and procedures" have become an excuse to raise the "veil of secrecy" and to resort to arbitrariness at the expense of the refugees. It has come to the point where UNHCR's New Delhi Office requires security protection" fearing attacks from the refugees rather than UNHCR providing protection to the refugees. The ratification of 1951 Convention Relating to the Status of Refugees is a statement of

intent unless it is enforceable in domestic courts. Since the Government of India is not even considering the ratification of the 1951 Refugee Convention, its enforcement in domestic legislation or development of a refugee legal regime is a far cry. A consistent legal framework is vital to the prevention of political ad-hocism, which often translates into forcible repatriation for refugees. The issue is not only development of domestic legislation but how to ensure that both the UNHCR and the Government of India strictly abide by their own standards and principles. For the refugees, the latter remains the immediate concern and the UNHCR has manifestly failed to address the issue of protection.

India as a home for refugees worldwide

UNHCR's Chief of Mission in India, Montserrat Feixas Vihe chaired the evening. The theme for this year's Refugee Day was 'Restoring Hope' and the subject of the lecture was 'Preserving Asylum in India: Achievements and Challenges'.

In the 45 minute lecture, Tharoor outlined how India has been one of the best places for refugees from around the world, how it tends to them and what are the issues the country still faces. The lecture was followed by questions from the audience.

Shashi Tharoor, in his brilliant manner and eloquent speech, laid down many aspects of the asylum conditions in India. India has, since time immemorial, been an extremely welcoming home to refugees from all over the world. He talked about the Jews, Parsis, Christians, Zoroastrians and of course, the Muslims who had been flocking to India because of 'a well founded fear of persecution.'

The best example that India can offer is that of Partition in 1947 when India was home to around 15 million people from across the borders on both sides.

However, India refused to sign the 1951 Refugee Convention and the 1967 Protocol inspite of being in practice of providing asylum for over 60 years. This, according to Tharoor, is a shining example of the "guff between legal position and reality." In fact, in the discussions after the lecture, India being a non-signatory country of the Convention and Protocol was raised as major issue.

It is important to understand that when refugees come, they don't just have a bag of belongings but also their hopes, aspirations, skills and dreams. India not only offers asylum to the displaced people, they're given equal rights and those who obtain Indian passports also obtain the right to vote in addition to other rights. They can establish themselves here and be productive until they return but they will not be deported. Their return is subject to their wish.

There are, however, certain challenges that India has to face. While the refugees have work permit in the informal sector, it must be understood that this sector is very competitive and difficult, with people from all over the country also participating. In the Capital alone, apart from the 22,000 refugees, there will be people from smaller towns in the rat race. Poverty stricken refugees must be given work permits in all sectors, according to Tharoor. Another issue is the suspicion with which they are treated. What the refugees don't realise is that in their new home, there could be equal distress. There is stereotyping and conservative mindset. In addition to poverty, they face discrimination as well. Indians need to be sensitised.

Tharoor says that India should move on from this modest position of not signing the Protocol or Convention. "Six decades of practice have the force of a customary law," he said. There is also the need for a refugee status determination and we should be afraid of economic migrants as well. Since India offers so much comfort, other countries might create more refugees but there's nothing much that can be done about it. India already did a military intervention in 1971 in East Pakistan. But once people flee, they flee, and what better than a welcoming nation like India?

'Refugees subjected to discrimination in India'

Activists and experts claim 30-year-old Rehman is just one among thousands of the over two lakh refugees in India who are subjected to discrimination and arbitrary detention as a result of the lack of a comprehensive legal framework to govern asylum seekers in the country.

The World Refugee Day is observed this Wednesday. As for Rehman, who heads the group of 250 Rohingya muslims who have

been camping in south Delhi's Okhla since April 9 to lobby for refugee status, his struggle to adapt to a new country has just begun. "We are used to insults.

"People associate our beards to terrorists, our physical features make us stand out, our clothes give away our poverty and the fact that we are asylum seekers make people look at us like we are stateless beggars.

"But we prefer this to the persecution our community suffered for decades in the predominantly Buddhist Myanmar. I know the road ahead here is going to be arduous, but we've come this far, we won't give up," says Rehman.

Ravi Nair from the South Asian Human Rights Documentation Centre, which is working for long-term law for rehabilitation of refugees, said if India wants to be fair to its refugees, then it can't do with a law that goes back to the 1940s.

"The existing law creates room for bias and executive caprice without due judicial process," claims Nair.

The United Nations High Commission for Refugees also feels that India needs a comprehensive legislation to govern refugees but says that India freely welcomes refugees, and that despite not signing the convention on refugee protection, it followed most of the principles within the document.

Nayana Bose, Associate External Relations Officer of UNHCR, said that they assess the claims of all asylum seekers using the same criteria and recognise as refugees those who fall within the definition as given in the 1951 UN Convention Relating to the Status of Refugees.

When pointed that many asylum seekers have claimed that their applications for refugee status were rejected arbitrarily, Bose said, "It is not a single individual who makes the final decision. "The legal officer who interviews the asylum seeker will make his or assessment of the claim, and this is always looked at by another legal officer, as well. If the applicant is rejected the first time, the asylum seeker can always appeal the decision," she said.

To a question on whether UNHCR keeps a tab on asylum seekers whose applications are rejected, Bose replied in the negative.

"When an asylum seeker's appeal is rejected, he or she is no longer of concern to us. "They either go back to their respective countries or continue living here illegally," she said, adding that this was where the agency felt that India needed a comprehensive legislation to govern refugees.

Bose was, however, quick to emphasise that India freely welcomes refugees, and that despite not signing the convention on refugee protection, the country followed most of the principles contained within the document. "It is important that the government enact a domestic refugee legislation. By implementing it, India can provide all of the rights to refugees as mentioned under the UN Convention on refugees even without being its signatory," says Nair. According to activists, the lacunae in the system are also impeding the work done by the UNHCR in providing legal aid to refugees.

India's refugee population is divided into two major categories: those who enter India as part of a mass migration and individual asylum seekers.

The former group makes up the majority of the refugee community and is composed mostly of Tibetans and Sri Lankans, while India deputises the UNHCR to determine the status of the remaining 22,000 individual asylum seekers. "We receive so many complaints every week. Most asylum seekers, whose applications for refugee status have been rejected, continue to live in the country as illegal migrants. "They find it difficult to find work and they are often discriminated because of their racial appearance and their lack of knowledge of the language," said 25-year-old Bonai, a political science student who heads the Chin Refugee Committee.

East Bengali refugees

East Bengali Refugees are people that left East Bengal following the partition of Bengal, which was part of the independence of India and Pakistan in 1947. A majority of these refugees were Hindus.

In 1947, Bengal was partitioned into the Indian state of West Bengal and the Pakistani province of East Bengal. East Bengal was later renamed East Pakistan, which subsequently broke away from

Pakistan to form the independent country of Bangladesh. Most of Sylhet district in Assam also joined East Pakistan and was subsequently considered to be East Bengal.

Settlement

The majority of East Bengali refugees settled in the new state of West Bengal, but a significant number also moved to the Barak Valley of Assam and the princely state of Tripura which eventually joined India in 1949. Around 0.5 million were also settled in other parts of India, including the East Pakistan Displaced Persons' Colony (EPDP) in Delhi (subsequently renamed Chittaranjan Park) and Orissa. The estimated 0.5 million Bengalis in Delhi and 0.3 million in Mumbai are also largely East Bengali refugees and their descendants.

Scope

The exact number of refugees has never been officially collected and estimates vary considerably. In the immediate aftermath of partition, commonly attributed figures suggest around 3 million East Bengalis migrating to India and 864,000 migrants from India to East Pakistan. Indian government estimates suggest around 2.6 million migrants leaving East Bengal for India and 0.7 million migrants coming to East Pakistan from India.

Further Migration

1950s

In 1950, it is estimated that a further one million refugees crossed into West Bengal. The 1951 Census of India recorded that 27% of Kolkata's population was East Bengali refugees.

1960s

Migration continued, primarily from East Pakistan to India, right up to the liberation of Bangladesh in 1971, both on an on-going basis and with spikes during periods of particular communal unrest such as the 1964 riots and the 1965 India-Pakistan War, when it is estimated that 600,000 refugees left for India. Estimates of the number of refugees up to 1970 are over 5 million to West Bengal alone. This includes around 4.1 million coming between 1946–1958 and 1.2 million coming between 1959 and 1971.

1970s

Another major influx came in 1971 during the Bangladesh Liberation War. It is estimated that around 10 million East Bengali refugees entered India during the early months of the war, of whom 1.5 million may have stayed back after Bangladesh became independent.

The outflow of Hindus from East Bengal had a particularly negative effect on the Hindu community of East Pakistan and subsequently Bangladesh, as a significant portion of the region's educated middle class and political leadership left. The heights reached by many of the East Bengali migrants and their descendants, including Amartya Sen's Nobel Prize and Megh Nad Saha's pioneering work in Astrophysics are considerable.

Refugee Women and Children

Introduction

Refugee camps serve as microcosms of poverty-stricken societies. While on a much smaller scale than an entire country, many of the same problems that plague the developing world also affect refugee camps and their inhabitants. Many problems are exacerbated by the close quarters, new environment, boredom, and lack of social order that often characterizes refugee camps. Specifically, women and children face many of the same issues in refugee camps as they do in urban slums and rural villages. While specific problems vary, broad issues such as inequality and abuse are seen universally.

Women in Camps

Women and children are typically hit the hardest by poverty and life in a refugee camp is no exception. Often the victims of sexual abuse and other crimes, women lack a powerful and unifying voice when it comes to their predicament in refugee camps. The life of a refugee is one of uncertainty, boredom, and fear. Women are subjected to all of these problems in addition to gender specific issues they also must face.

Concerns of Women

The concerns of women in refugee camps are limitless in scope but include such issues as discrimination, sexual violence, human trafficking, and maternal and reproductive health problems. Rape is often used as a weapon towards women in order to demoralize and terrorize communities and families. Sexual violence stigmatizes women and leaves them emotionally and physically

destroyed. These are issues that women face on top of their responsibilities as mother, head of household, teacher, etc. All of these concerns make a woman's life in a refugee camp extremely difficult.

Health Concerns of Women

Frequently, especially in low-income countries, the health issues facing refugee women are not unique to refugees, but are common to the entire female population. These range from dehydration and diarrhea to high fevers and malaria, but also include more broad phenomena, such as gender-based violence and maternal health. All of these ailments, however, are multiplied for refugee women because of the external factors contributing to their particularly poor health. These external factors include culturally-reinforced gender inequality, limited mobility, lack of access to healthcare facilities, high population density within the refugee camps, and low levels of education.

One of the biggest concerns regarding female refugees' health is their reproductive health. In refugee situations, reproductive health often falls to the bottom of the list of priorities, primarily because in situations where healthcare is already scarce, life-saving measures are often of prime concern. Much of reproductive health is not seen as a "life or death" issue, although it clearly is. Because of the lack of healthcare infrastructure in refugee-dense areas, women often give birth without any trained medical staff present. Complications during birth can often result from a lack of healthcare assistants or medical facilities.

Another key healthcare concern is that of gender-based violence within the refugee camps. It is generally recognized that, "displacement, uprootedness, the loss of community structures, the need to exchange sex for material goods or protection all lead to distinct forms of violence, particularly sexual violence against women," making women in refugee situations particularly vulnerable. Additionally, sexual violence is considered a taboo subject in many cultures, and therefore gender-based violence often goes unreported. Even if women did have the courage to report violence, oftentimes there is nowhere within the refugee camp for them to turn.

Capability-building Solutions

Séverine Deneulin explains Amartya Sen's Capability approach as an approach to development where the focus is not on income, but on people's capabilities. Capabilities are the freedoms to accomplish and promote what people value doing and being. Participation in the political process is one of Sen's essential capabilities and the empowerment of women is included in this capability.

Including women in important decisions is one form of empowerment. Aid organizations often lack gender-sensitive staff, and policies are often not comprehensive in their inclusion of women. Listening to women, working with pre-established organizations, and researching what services women actually want and need are all ways to empower women and get them involved in the governing of refugee camps.

Water Collection

Women spend a considerable amount of time every day collecting water for their families, but they are rarely ever consulted when it comes to water supply planning and management. Collecting water can take hours or even days and is often unsafe. Women spend time collecting water when they could be back at home tending to their children, generating income, or providing meals for the family. Adequate water services could be better provided if aid organizations and those in charge of refugee camps discussed water supply issues with women.

Agriculture

Women often participate in agricultural tasks in order to provide for their families. However, as with water supply management, women are often excluded from the discussion on what to plant in refugee camps. Establishing committees that include women in the agricultural planning process allows them to contribute their knowledge to the planning process. Often, women are just as capable as men when it comes to agricultural services, but often lack the tools, seeds, and land to effectively produce anything. Giving women the tools they need to farm is one way to increase the capabilities of women in the camps.

Children in Camps

Nearly half of the thirty four million people with whom the United Nations Refugee Agency is concerned are children. Children are often the most neglected refugees. The United Nations has indicated five major issues of importance concerning refugee children: separation, sexual exploitation and abuse, military recruitment, education, and adolescent-specific concerns.

Children's Concerns

Separation

Separation of children from their families is a common issue that has negative consequences for the children who are separated. If separation occurs, it is important to document the separation and attempt to reunite the child with his/her family (if this is in the best interest of the child). A strong family support network is essential to the proper growth and development of children in general, but especially those living in refugee camps.

Sexual Exploitation and Abuse

There are many associated dangers that come with sexual exploitation and abuse including teen pregnancy, infection with sexually transmitted diseases such as HIV/AIDS, and traditional practices that are often harmful such as genital mutilation. The responsibility to protect these children falls on the host government, the refugee community, and other humanitarian organizations. The lack of structure in refugee camps can lead to abuse. Improving awareness of the issue (both in and out of the camp), improving access to education, and creating safe living conditions are all potential strategies to curb sexual exploitation and abuse. Sexual exploitation and abuse can be publicly addressed and dealt with through legal battles, adequate health care, psychological support, and protection of the abused.

Military Recruitment

Refugee children are at an increased risk for recruitment by military forces. Often separated from their families, there is nobody to fight for a child when he/she is forcibly recruited by a military and forced to serve as a child soldier. There are several methods of recruitment: compulsory recruitment, voluntary recruitment,

or forcible recruitment. Both boys and girls alike are recruited to join militaries and often fight alongside adult soldiers. However, other duties may be carried out by children such as cooking, delivering messages, or cleaning. Children enrolled in school are less likely to be recruited because it is more difficult for military forces to recruit an entire school as opposed to a single child playing alone. The UN states that children reap the benefits of disarmament, demobilization, and reintegration.

Education

Amartya Sen, Noble Prize winning economist, has listed education as an essential human capability that is integral to the overall well-being of a person. This is especially true when it comes to children living in refugee camps. Education serves a variety of practical purposes in addition to gaining knowledge and skills for future endeavors. Children in schools are at a decreased risk for military recruitment, sexual violence, HIV/AIDS transmission, and crime and drug use. The structure provided by education also provides a sense of normalcy for children living in refugee camps. The unstructured life of a refugee can be hard on children, and school provides children with a break from the tediousness of everyday life.

Adolescent Issues

Adolescents are frequently overlooked by organizations that are providing foreign aid to refugee camps. Often if a parent is lost it is up to the oldest child to take care of the younger children, including those they are not related with, and this role frequently falls to the oldest female perceived as a mother figure. One such experience is described in the novel *After the War*. Adolescents would also benefit greatly from increased educational, vocational, and recreational activities in refugee camps for many of the same reasons children benefit from these opportunities.

Refugee Programs

Numerous Nongovernmental organizations (NGOs) and intergovernmental organizations work to advocate on behalf of refugee women and children. The International Rescue Committee (IRC) and the United Nations Human Rights Council (UNHRC)

are two of the better known organizations advocating for refugees. In addition to services, refugees are in need of advocates to successfully lobby governments for their well-being.

International Rescue Committee

The International Rescue Committee was founded in 1933 to respond to humanitarian crises across the globe. The IRC works in forty countries to help displaced people return to normal lives. The IRC works to build capabilities by providing sustainable solutions to crises, and spends 90% of donations on programs that directly affect the impoverished. The IRC serves as an advocate for women to foreign governments to pass laws concerning the health and well-being of refugee women. They also educate men and boys to change the culture of violence towards women.

United Nations Human Rights Council

The UNHCR is a branch of the UN that was established in 1950 to help people displaced by World War II. Now the agency focuses on helping refugees, stateless people, asylum seekers, internally displaced people, and many other people who are without a permanent and safe home. They work in nearly every continent to provide aid and services to displaced people. The UNHCR advocates for refugees, builds capabilities, responds to emergencies, and provides assistance and protection among other services and programs.

Refugee Adaptation

It is the very nature of a refugee to be displaced. Often refugees resettle in new countries either close to the refugee's home country or as far away as America. A refugee's adaptation to his/her new home is dependent on many factors including education, sex, age, size of residence, ethnicity, ethnic support network, sponsorship, voyage trauma, marital status, length of residence, and in the case of refugees moving to America or other English speaking countries, English proficiency. While resettlement is hard on all refugees, children often have an especially hard time adapting to their new surroundings.

Adaptation and Children

Once a child is past the age of six months, their adaptation

to their new surroundings is partially determined by the amount of trauma, stress, and violence the child has endured thus far in their lives. Identification with an ethnic group is also important to a child's functioning. Boys are more vulnerable than girls to poorly adapt to their new surroundings because they are less able to adequately articulate their problems. Children adapt easier in new countries when the size of their ethnic group is large, there is a degree of cultural continuity from the home country to the host country, and the ethnic group is maintained in the host country. The idea of a cultural melting pot is not conducive to a child's comfort in their new home as maintaining cultural roots is more important in the early stages of resettlement. Families represent an important way to help refugee children adapt to their new home.

Mental health of refugee children

Numerous studies have been conducted throughout much of the past half century regarding the mental health of refugee children, most of which indicate that multiple pre-migration and post-migration stressors can increase the likelihood of such children acquiring certain mental deficiencies. Although all refugees (regardless of their age) can be impaired by their experiences, children are typically considered to be the most susceptible to the process, as "At a crucial and vulnerable time in their lives they have been uprooted," and oftentimes exposed to danger and insecurity as well. Ultimately, compared to other immigrants and to refugee adults, "...refugee children are more likely to have serious problems associated with malnutrition, disease, physical injuries, brain damage and sexual or physical abuse." These problems may affect the child's cognitive, social and emotional development, leading to serious mental deficiencies/illnesses including post-traumatic stress disorder (PTSD), anxiety and depression.

Definition of a refugee

According to the United Nations High Commissioner for Refugees (UNHCR), the term "refugee" is meant to refer to any individual who "...is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for

reasons of race, religion, nationality, membership of a particular social group, or political opinion." Prior to the twentieth century, a legal definition for a "refugee" did not exist. Largely following the First World War (and as a consequence of a massive number of Bolsheviks fleeing from Russia), states began to recognize certain groups of people as "refugees", and granted them specific rights in accordance with this association.

The United Nations 1951 Convention Relating to the Status of Refugees effectively codified this recognition and was augmented by a 1967 protocol which broadened the recognition of such refugees beyond an initial focus on Europeans displaced after World War II. At present, 147 nations are parties to either the 1951 Convention or the 1967 Protocol. As mentioned, the term refugee originally maintained a relatively narrow focus; however, over time the political meaning of the term "refugee" has changed substantially, and now reflects a far broader range of social phenomena.

Still, some scholars argue that the definition provided and supported by the UNHCR is somewhat narrow in its focus, as it does not manage to account for certain factors which can force an individual's displacement from their homeland. For example, the UNHCR's definition does not manage to acknowledge that "No international or national legislation explicitly recognises or defines 'environmentally displaced persons' and there are no bodies mandated to offer them protection." This area of focus constitutes a topic of great debate in contemporary international relations.

According to a report published by the UNHCR IN 2006, approximately 44 % of the world's refugees are children. With regards to international law, according to the Convention on the Rights of a Child on the Involvement of Children in Armed Conflicts, a child is typically considered to be anyone below the age of 18. Thus, of the millions of individuals who have been forcibly displaced throughout much of the past half century, nearly half have been below the age of 18.

According to the UNHCR, since 1980, 1.8 million refugees have been invited to live in the United States, 40% of whom have been children. An estimated 95% of them resettle with their parents. About 80% of the world's refugees are hosted by developing

countries. Presently, the largest refugee producing countries include Afghanistan, Iraq, Somalia and Sudan.

Contributing factors

The potential contributing factors which can lead to mental health illnesses in refugee children are numerous. According to a committee created by the National Child Traumatic Stress Network's Refugee Trauma Task force – a project funded by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services – stressors can occur not only prior to a child's resettlement, but also during and following the process itself.

Pre-migration factors

With regards to potential contributing factors faced prior to a child's resettlement, the main issues involve the adverse effects of child labour (which can include their recruitment as both soldiers and sex slaves), warfare and economic disparity.

Child labour

There are two primary aspects in which children can suffer grave mental health issues as a result of their utilization as "workers" within a given nation. The first aspect deals with the sex industry, and involves children being taken from their homes and used as sex slaves.

Sex industry

The Office of Citizenship and Immigration Canada considers children under the age of 18 who are not accompanied by a family member to be considered "unaccompanied". UNHCR estimates that over 12,800 children travel in this "unaccompanied" fashion to industrialized nations on a yearly basis. Ultimately, such unaccompanied children constitute 4 to 5 percent of all asylum seekers. Upon arrival, refugee status can be claimed and protection is provided; however, numerous children are forced to travel with human smugglers and are coerced to lie and tell immigration officials that these smugglers are their relatives. Many children typically choose to leave their homeland due to poverty and violent conditions. Moreover, separated children may seek asylum because of fear of persecution or a lack of protection due to human rights

violations in their home nation. Generally speaking, political crises such as civil wars and religious or ethnic conflicts are still deemed the main reasons for unaccompanied minors to flee their countries of origin. Unfortunately, these desires can be potentially harnessed by these smugglers in an attempt to pursue their exploitation as child sex workers. Volatile economic conditions can serve to make children particularly vulnerable to traffickers with young girls representing the primary target of sexual exploitation. According to the report entitled "Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union", the countries from which unaccompanied children typically originate are very diverse. The main originating points of these unaccompanied children are Moldova, Romania, Ukraine, Nigeria, Sierra Leone, China, Afghanistan and Sri Lanka. Additionally, the data provided by the Immigration and Refugee Board confirms this increasing trend in Canada as well. Many of these unaccompanied children arriving from conflict zones are being forced to take the sex traffic route, an industry that generates over 30 billion USD annually. The International Labour Organization (ILO) estimates that about 1.2 million children are trafficked for labour or sexual exploitation, representing about 50 percent of the 2.4 million people trafficked worldwide.

Child soldiers

The second aspect deals with the use of children during times of war, wherein these children can be recruited as child soldiers and placed on the battlefield. It follows (by logical extension) that such a contributing factor is most likely when a child escapes a war-torn nation (as in the case of Rwanda during the genocide of 1994, for example). Ultimately, the prevalence of child soldiers has increased dramatically since WWII, culminating during the 1990s when the number of child soldiers reached approximately 300 000. This vast number was largely reached due to the emergence of small arms and light weapons (SALWs), which are both small and light enough to be wielded by a child. While many children are abducted and forced into becoming soldiers, many others join voluntarily (perhaps out of desperation as a result of poverty, grief, a desire for revenge, or even their particular ideology). Numerous testimonials provided by non-governmental

organizations working with these children following their resettlement indicate that they often enjoy the sense of power that comes with the weapon and the control it affords them. SALWs represent a symbol of masculinity for young and previously defenceless boys. In this way, whether a child is abducted and forced into the army or joins voluntarily, war itself can often become a part of the child's identity. This phenomenon – particularly when combined with the severe effects of such conflict on both the physical welfare and mental stability of the child – demonstrates how difficult reintegration may prove to be when they are removed from the unstable environment.

In terms of potential mental health issues arising from a child's activities as a soldier, according to the Journal of the American Medical Association (JAMA), former child soldiers are more likely to attain severe mental health problems including symptoms of PTSD, anxiety and depression. During a study conducted in 2008 involving 141 former child soldiers, 52.3 % were diagnosed with depression, 46.1 % were diagnosed with anxiety, and 55.3 % were diagnosed as displaying identifiable symptoms of PTSD. In total, 62.4 % of the respondents studied were considered to be "functionally impaired" as a result of their experiences as child soldiers.

Warfare

The impact of war as a general experience can also serve to greatly impair the mental faculties of children prior to their resettlement as refugees. According to a report released by the United Nations Department for Policy Coordination and Sustainable Development in 1996, throughout the past century the proportion of war victims who are civilians (i.e. non-combatants) has increased dramatically from as low as 5 per cent to over 90 per cent in certain conflict regions. Of these civilians, a large majority are inevitably children. When a child is subjected to remain confined within a hostile environment for a protracted period of time, their confrontations with violence (both direct and structural) can lead to not only physical trauma, but mental trauma as well. Although war can impact those involved in an oftentimes unprejudiced (i.e. ubiquitous) fashion, children tend to feel the most helpless and vulnerable during times of conflict.

Consequently, they will often feel a degree of shame following their removal from the conflict, alongside a loss of self-confidence in their ability to control their own lives. This shame, particularly when combined with the horrific atrocities such children might observe, can serve to enhance their vulnerability to developing such mental conditions as PTSD and depression.

In a study conducted in 2004, 68 Rwandan orphans were interviewed regarding their war experiences and PTSD symptoms. It was found that each respondent had been exposed to extreme levels of violence and that the total number of "experienced traumas" described by each individual respondent was positively correlated with the number of PTSD symptoms they exhibited. In other words, the more violence the children had seen during the genocide, the greater the effect of the subsequent PTSD. Important to note is the fact that this study was conducted exactly 10 years after the genocide had occurred in 1994, which indicates the potentially long-term nature of mental health deficiencies in children previously affected by armed conflicts.

Economic disparity

Poverty constitutes a health risk for any child. According to most physicians it stands as a "...well-recognized fact that poverty has important implications for both physical and mental health." The World Health Organization (WHO) has referred to poverty as the greatest cause of suffering on earth. Although poverty is not unique to refugee populations, it can be particularly pervasive given conditions supporting the creation of such individuals (i.e. within war-torn countries); therefore, it stands as an important pre-migration factor to take into consideration when characterizing mental illnesses in refugee children. Poverty can be "...intrinsically alienating and distressing, and of particular concern are the direct and indirect effects of poverty on the development and maintenance of emotional, behavioural and psychiatric problems." Although money is not a "guarantor of mental health", it is generally accepted that economic disparity can be "...both a determinant and a consequence of poor mental health." The issue of economic disparity can become greatly compounded by any (or all) of the other factors mentioned above, which can serve to fundamentally

increase the likelihood of the eventual development of a mental health deficiency in a refugee child.

Post-migration factors

With regards to potential contributing factors faced following a child's resettlement, the main issues involve the adverse effects of a child's potential separation from family members alongside the stigma which can accompany a refugee during the process of resettlement.

Separation

If a child is determined to be "unaccompanied", not only will they be vulnerable to being trafficked by smugglers but they will also be without their traditional caretakers. Consequently, refugee children who are without caretakers may be at an even greater risk (as compared to other refugee children) in terms of potentially exhibiting psychiatric symptoms of mental illnesses following episodes of traumatic stress. A study conducted involving 455 Vietnamese children compared unaccompanied refugees (i.e. refugees without their traditional caretakers) in camps in Hong Kong and South East Asia to a similar number of local children (i.e. individuals who remained in contact with their traditional caretakers), placing a focus on their behavioural patterns. It was found that the unaccompanied refugee children displayed more behaviour problems and emotional distress than their counterparts. Ultimately, parental well-being plays a crucial role in enabling resettled refugees to transition into their newfound society in a smooth fashion. Studies conducted throughout the past few decades have even suggested that PTSD symptoms in mothers (i.e. caregivers) can oftentimes be correlated to the internalization of PTSD symptoms within refugee children. Consequently, if a child is separated from his/her caretakers during a process of resettlement, the likelihood that he/she will suffer through a mental illness can become potentially increased.

Stigma

Some research has been conducted to indicate that stigma can serve as a fundamental cause of mental disease exacerbation in refugee children. Refugees are often at risk of stigmatization as

a result of their respective race, ethnicity and/or religion; however, they can also be stigmatized if they encounter mental health deficiencies both prior to and during their resettlement into a new society, which actively compounds the issue and can perpetuate the cycle of stigmatization. Even simple disjunctures between parental and host country values (alongside asymmetric acculturation) can serve to create a rift between the refugee child and his/her new society, which can lead to his/her stigmatization and contribute to the development of a mental health deficiency. A study was conducted involving two different ethnic groups of refugee children from Afghanistan who were resettled in the United States and found significantly lower levels of PTSD exhibited by the group that (upon investigation) had experienced the least degree of social stigma regarding their participation in Muslim activities. The study effectively raises the question as to whether or not the lower rates of PTSD in the one group of refugee children is related to the group's overall exposure to stigmatization (which was less than that of the other group).

Access to healthcare

Mental health of all children, including refugee children, is usually advocated for by parents, who have historically possessed the right to make decisions on behalf of their children, with little to no limitations. The Canadian Immigration and Refugee Protection Act was amended in 2002, resulting in an influx of refugees with complex medical needs, but there is a lack of refugee-specific and especially child-specific research in the area of help-seeking and service utilization. Most research interest has centered on ethnic minority populations but does not look at refugee subsets of these populations. It is also difficult to determine service utilization rates and patterns, particularly for children who are known to access mental health care across a range of sectors. There is more data, although still limited, on refugee women and specifically mothers in North America, but there are consistent reports of mental health services being underutilized by this cohort. Canada has universal health care, but the number of Canadians with health care needs not addressed is growing. The risk of unmet needs is highest in women from low-income households, and even when external factors such as help-seeking characteristics

are controlled, immigrant and specifically refugee women have a higher percentage of unmet health services than their non-immigrant counterparts in similar socioeconomic brackets. Research shows various language, cultural and structural barriers to access for refugee women and mothers. This is vitally important to the mental and physical health of refugee children, since parents are the advocates of their children's health. Better understanding these barriers will provide insight into improving mental health care access of children of refugees in North America. There are also unaccompanied refugee minors upon whom some research has been conducted.

Cognitive and emotional barriers

As a result of the migration process, many immigrant and refugee women suffer serious mental illnesses such as depression, schizophrenia, PTSD, thoughts of suicide and psychosis. Having to avert repressive governments and cope with lengthy bureaucratic procedures to flee their homelands, many refugees develop a mistrust of authority figures. Personal experiences with biomedicine, fear or authority and a general lack of awareness regarding mental health issues can create significant barriers in terms of how women are able to seek help in managing their mental illness.

A study conducted by Donnelly et al. followed ten women born in China and Sudan who were living with mental illness. The respondents reported that a lack of appropriate services that suit their needs creates a structural barrier for these women to access mental health care. Furthermore, women from certain cultures often draw upon informal support systems and practice self-care strategies to cope with their mental illnesses and its related problems, rather than relying so much upon biomedicine (as is encouraged by the Western medical model). These effects are compounded by difficulties associated with language and cultural differences in a refugee's ultimate understanding of mental illness and the support systems utilized.

Though some women in this study were able to seek and actively access health information through workshops and counselling, not all participants were able to access the necessary

mental health care services in a timely manner. Some participants waited until their problems grew beyond their control before reaching out for professional and medical help, at which point doctors reported that it had reached the crisis phase of the problem. Factors reported as delayers of their help-seeking included :

- Fear of discrimination and stigmatization
- Denial of mental illness as defined in the Western context
- Fear of the unknown consequences of being diagnosed with mental illness (i.e. deportation, separation from family, losing children)
- Mistrust of Western biomedicine

Amongst these individual factors, participants in the study said fear of discrimination and stigmatization by their ethnic community members stood as the greatest cultural barrier. In another study carried out by Crooks et al., sources of mental stress in the context of adjusting to life in a new setting were researched for newcomers to Toronto, Canada (alongside the stress involved in the newcomer's ability to utilize the new health care system inherent of the region to which they have resettled). With more than 5 million residents, The GTA is Canada's largest city, and settlers to the Toronto metropolitan area comprised over 40% of all immigrants to Canada between 1996 and 2006. Thus, a significant number of health and social services aimed at newcomers are situated in Toronto. Still, many refugee mothers in this study expressed stress (inducing insecurity and fear) over going outside and navigating the new environment without the knowledge of how to get around. This feeling of fear was emphasized among non-English speakers who stated that they were not only unfamiliar with their new surroundings but also felt uncomfortable asking for help from others in their neighbourhoods.

Language barriers and cultural differences were frequently cited as sources of stress for many mothers during the ongoing process of adjusting to the Canadian health system. Shaped by cultural practices and understandings of medical care, newcomers had unmet expectations regarding care in relation to conversation and etiquette. Subtle gestures and inferred perceptions such as feeling "rushed" and avoidance of eye contact were deemed to constitute a lack of respect on the part of health care practitioners.

and considered a source of mental stress for the patients. This was compounded by the fact that for some women from certain cultural backgrounds in which mental health issues are considered taboo, even discussing the topic with health and social care workers is a source of apprehension. For those mothers not fluent in English or unable to find a doctor conversant in their mother-tongue, challenges experienced in creating successful provider-patient interactions were "...further compounded by language barriers and uncertain cultural norms when seeing doctors."

Special case: post-partum depression

Access to services for refugees living in Canada is especially important during the postpartum period, when additional health services and support are even more vital to maternal and child health. Children of postpartum mothers are exposed to hostility, withdrawal and inconsistent parenting, alongside other negative maternal affect and behaviours. These children may therefore experience limited positive affect and higher levels of negative affect in their interactions with their mothers. Attachment, self-control and other important developmental attributes are likely to be disrupted in children of depressed mothers. Furthermore, postpartum depression can predict negative behavior in children even years later. Though remissions of maternal depression with treatment has recently been linked to improved child outcomes in middle childhood and adolescence, the data does not suggest that recovery from depression can fully reverse disrupted developmental processes already underway in the children. Consequently, the most effective possible solution concerns early detection and recovery to mitigate the negative outcomes which become more difficult to change over developmental time.

Even if early recovery can help to reverse the negative effects on child psychological development there are many structural and cultural barriers that may prevent access to the assistance needed, especially for refugee mothers. Recent studies found refugee claimant women to have a higher number of postpartum health and social concerns not being addressed by the Canadian health care system. These studies on the barriers to health and social service post-birth reveal several main themes regarding the lack of access for refugee mothers to health services.

Structural barriers

Refugees are a special sub-population of North American newcomers that require comprehensive and complex care. Their social determinants of health render them particularly vulnerable to experiencing mental health complications both pre-and post-migration. Upon arrival to their host country, refugees encounter a number of structural barriers to accessing adequate mental health care services. Language barriers and a lack of culturally competent care constitute two pressing concerns that dominate literature in refugee health studies. In addition, cost complications, a lack of public awareness and access to information about available resources, and a few administrative deterrents for health care providers to take on refugee patients represent a few barriers to accessing mental health care services that refugees face within their North American host country. The following exploration of the structural barriers to accessing mental health care services articulates how the adult refugee experience interacts with the likelihood of child and adolescent refugees receiving adequate mental health care.

Language barriers

The Canadian Task Force on Mental Health Issues Affecting Immigrants and Refugees has identified that fewer than 20% of adult refugees in Canada can speak either English or French upon arrival. The multifaceted issue posed by language barriers is repeatedly represented in refugee studies literature as one of the largest structural barriers refugees face in accessing mental health care services in North America. While a broad spectrum of translation services are available to all immigrants-including refugees-only a small number of those services constitute government-sponsored programs. In Canada, a tripartite subsidy system has created some confusion over the responsibility and role of the government in providing translation services as part of an insurance plan to Canadian newcomers. As a result, community-sponsored social and health programs attempt to re-assign tight internal budgets to absorb the expensive costs associated with translation services. The redistribution of funds to accommodate the need for translation services is extremely limited so as to not compromise other essential services provided

by community health organizations, the upshot of which is a lack of adequate translation services available, and a consequent language barrier to adequate care.

With a shortage of subsidized translators available, refugee patients and their health care practitioners are forced to improvise their method of communication. Because children and adolescents have shown a greater capacity to adopt their host country's language and cultural practices in settlement, they are often used as linguistic intermediaries between service providers and their parents. Informal practices such as this one may result in increased tension in family dynamics, wherein potentially culturally sensitive roles are reversed. Although the likely successful transition of refugee adolescents is well defined, the added stress of needing to compensate for a lack of available translation services poses undue stress on the cultural adaptation process. In one camp, high self-esteem and self-worth of adult-accompanied refugee children correlates directly with their acquisition of their host country's language. In the opposing camp, adult-accompanied child refugees' increased adaptability to the host country's culture combined with a lack of adequate health care resources (e.g. translation services) prescribes an undue responsibility for their parent's care that is directly related to a decrease in their own mental health. Research has shown that traditional family dynamics in refugee families that are disturbed by cultural adaptation (e.g. the acquisition of language) tend to destabilize important cultural norms, which can create a rift between parent and child. The resulting affect is an increase of depression, anxiety and other mental health concerns in the culturally-adapted adolescent refugees.

Relying on other family members or community members has been documented to have equally problematic results: relatives and community members familiar to the patient have been known to unintentionally exclude or include details relevant to comprehensive care, which can result in misdiagnoses. Health care practitioners are also hesitant to rely on members of the community because it poses a distinct breach of confidentiality. In addition, research has shown that having a third party present reduces the willingness of refugees to trust their health care practitioners, and disclose information vital to the process of

receiving mental health care. Even when a translator is available, accessing culturally sensitive care, remains complicated. Some refugees may have emerged from conflict in their country of origin that involves friction between opposing sub-cultures. Translators are acquired based on their ability to translate a language, without consideration of potential conflicting cultural identities. When cultural consideration is given, the small pool of translators available for any particular language can make it impossible to accommodate a cultural divide. Furthermore, McKeary has identified that translation services in North America are structured in such a way that patients may receive a different translator for each of their follow-up appointments with their mental health care providers, and "...the lack of a consistent professional interpreter that follows a client through the system may mean that refugees need to re-tell their story via multiple interpreters, further increasing the potential to compromise confidentiality and using valuable time in a provider's office."

The structural difficulties of cross-cultural interaction in the North American health care system are not limited to language barriers. Cultural sensitivity plays an integral role in every aspect of the comprehensive care process associated with refugees.

Culturally competent care

Providing culturally competent care is essential to mental health services for refugees. However, research has shown that a lack of availability of culturally competent care in North America is one of the leading factors contributing to many refugee's inability to access mental health care services. Culturally competent care exists when health care providers have received specialized training that helps them to identify the actual and potential cultural factors informing their interactions with refugee patients.

At the epicenter of the traditional biomedical model of Western medicine is the concept of a "universal patient body," wherein considerations of cultural and social identity are not prioritized in the treatment process. Curriculum that addresses culturally competent care is not available in North American medical schools, resulting in a shortage of health care providers with the specialized training required to navigate the cultural divide in providing

comprehensive care to refugees. While culturally competent care tends to prioritize the social and cultural determinants contributing to health, a biomedical model of care often fails to acknowledge them at all.

For instance, in a biomedical model of care, patients are expected to present their symptoms in a "straightforward" manner to their health care providers. A culturally competent model of care recognizes that a patient's description of symptoms is case sensitive: it is the product of interactions between cultural norms about disclosure, the experience of manifest symptoms varying with ethnicity, and the individual patient's readiness to offer personal information (among other things). With respect to considerations of mental health care services, refugees are a particularly vulnerable subcategory of the newcomer population; their specialized needs are often critical and complex, demanding physicians and healthcare providers with a particular skill set and knowledge base. To provide culturally competent care to refugees, mental health care providers should demonstrate some understanding of the patient's background, and a sensitive commitment to relevant cultural manners (for example: privacy, gender dynamics, religious customs, and lack of language skills). In North America, a documented shortage of mental health care providers compounded with the restrictions of the types of government-subsidized services available to refugees makes culturally competent care a virtual impossibility.

The resulting affect of an interaction with mental health care that is not culturally competent is a negative experience on the part of the refugee patient accessing the healthcare service. Studies have shown that a large part of the willingness of refugees to access mental health care services rests on the degree of cultural sensitivity inherent within the structure of their service provider. Because they are unlikely to receive culturally competent care within the biomedical model of healthcare that is available to them via government-subsidy, refugees are unlikely to access the resource again.

Furthermore, the protective influence exercised by adult refugees on their child and adolescent dependents makes it unlikely that young adult-accompanied refugees will access mental

healthcare services. Only 10-30% of youth in the general population, with a demonstrated need for mental healthcare services, are accessing care. Several studies have reported that adolescent ethnic minorities are less likely to access mental healthcare services when compared to youth in the dominant cultural group. A known lack of available culturally competent care interacts with the three stages of the help-seeking process of adolescents :

1. Problem-recognition,
2. Decision to seek help (internal and external factors), and
3. Service selection/utilization,

To significantly reduce this percentage in the adolescent refugee sub-population. Parents, caretakers and teachers are more likely to report an adolescent's need for help, and seek help resources, than the adolescent is to self-identify the need for help. In this way, unaccompanied refugee minors are even less likely to access mental health care services than their accompanied counterparts; a lack of culturally competent care reduces the likelihood that the first step of the help-seeking process, problem recognition, will be realized.

In their host countries, unaccompanied refugee minors do not receive 24 hour supervision like some of them would by their caretakers or parents in their country of origin. As "internalizing complaints such as depression and anxiety have been found to be prevalent forms of psychological distress among refugee children and adolescents," unaccompanied refugee minors undergoing this cultural adaptation process become victims of a discrepancy between the inability to self-identify a need for help and the lack of support necessary for other-identified need for help.

Other obstacles

- Additional Structural Deterrents for Refugees to Seek Care:
- Complicated insurance policies based on refugee status (e.g. Government Assistant Refugees vs. Non-), resulting in hidden costs for refugee patients
- Lack of Transportation
- A lack of public awareness and access to information about available resources

- An unfamiliarity with the host country's healthcare system, amplified by a shortage of government or community intervention in settlement services

Structural Deterrents for Healthcare Professionals to Provide Care:

- Heightened instances of mental health complications in refugee populations
- A lack of documented medical history, making comprehensive care difficult
- Time constraints: medical appointments are restricted to a small window of opportunity, making it difficult to connect and provide mental health care for refugees
- Complicated insurance plans, resulting in a delay in compensation for the healthcare provider

Access to education

Refugee children face a multitude of obstacles upon their arrival into North America and-given that the Canadian or American school system is a social organization that most children come into contact with-education holds a unique place in the lives of refugee children. Oftentimes, refugee children experience traumatic events in their home country that can lead to a hindering on their learning. Research has shown that education is essential for refugee children's psychosocial adjustment. And it is important consider the needs and obstacles to education for refugees, and interventions for success.

Case study: Vietnamese refugees

Most of these refugees had minimal formal education, few marketable skills and little English proficiency. Upon arrival in the US, Vietnamese households were usually large and extended, including minor children, married children, grandchildren, other relatives and non-relatives.

Vietnamese children faced many problems within their schools and were affected by the backgrounds of schoolmates alongside their own backgrounds. These differentiations in backgrounds and cultures placed them at a higher risk of having lower motivational outputs and pursuing disruptive behaviour.

Contemporary Vietnamese American adolescents are prone to greater uncertainties, self-doubts and emotional difficulties than other American adolescents. In general, Vietnamese children are less likely to say they have much to be proud of, that they like themselves as they are, that they have many good qualities, and that they feel socially accepted.

Despite these issues and the fact that Vietnamese children attend urban public schools that many middle-class families have abandoned, research has shown that they are making significant progress in education. In fact, "Vietnamese adolescents were less likely than their American peers to drop out of high school, and Vietnamese young adults were more likely than their American peers to attend college."

Issues faced

Structure of the education system

Refugee children face a multitude of problems upon their arrival into North America and as such require some examination with respect to how access to education and the educational system can impact their mental health. In the article "School-based Prevention Programs for Refugee Children" it is noted that "...in countries hosting a large number of immigrant and refugee children, schools are the institutions best positioned to implement prevention and treatment programs." The author suggests a number of ways in which schools can meet the "...psychosocial needs of children affected by war or displacement, especially through programs that provide them with avenues for emotional expression, personal support, and opportunities to enhance their understanding of their past experience."

The education system, as it currently stands in Alberta and many other Canadian provinces, has an age-cap of 19 years. This age-cap means that children must have finished within publicly funded high schools by the age of 19 or pay a fee in order to continue receiving education services. This educational policy can be particularly harmful to refugee children given that they often spend time away from school due to the political conflicts in their home countries and their flight to their country of refuge during resettlement. In addition to the lack of time spent in

school, grade placement at their new school can also be problematic. Within the Canadian education system, there is no test or special interview process that refugee children and their families are required to take upon their enrollment in the school system. Consequently, educators are typically forced to simply guess the grade in which the child/children should be placed. Researchers suggest that schools should spend more time with the refugee family, discussing previous experiences of the child, not only in an effort to ensure that they are being placed in the correct grade but also to attempt to provide any necessary accommodations in order to ensure that they are able to complete secondary school upon their arrival, regardless of the age-cap placed on students.

Residence

It has been shown that refugee children who end up living in large urban centers have a higher rate of success at school given that their families have access to additional social services that can help address their specific needs. As this research suggests, those families who are unable to move to urban centers are at a disadvantage, which is something that society needs to address.

Language barriers/ethnicity

A study from within the Canadian school system indicates that ethnicity is a highly influential factor in determining educational success among refugee children. It was found that a higher number of Yugoslavian children continued onto post-secondary education than any other ethnicity. Researchers have attributed this success to the fact that these children may be more comfortable with the English language or an established school system. They have also noted the possibility for a much more negative explanation regarding this discrepancy in success which essentially points to the notion that many of the Yugoslavian children are white, implying that discrimination is still prevalent within the education system (which can have an adverse effect on the well-being of certain groups of children and lead to a reduction in their overall school performance). These same researchers have suggested that the success of these Yugoslavian children should encourage school boards to implement programs that aid other ethnic groups in their transition into the Canadian school system.

Other obstacles

According to Jan Stewart, many refugee students saw education as very important to them and a good agent for change. However, in many cases "...the school just does not seem to be a place where students find success." There are several reasons why a refugee child might not find success within the schooling system when arriving at the host country. Firstly, students may experience disruptive schooling in their home country (i.e. country of origin) or an absence of schooling altogether. It is extremely difficult for a student with no previous education to enter into a school full of educated children. It may also be a struggle for teachers to place these students into the appropriate classrooms without making them feel alienated or incompetent. Secondly, a child's perceived attitude toward their teacher(s) may affect their success within the classroom. Oftentimes a child will feel discriminated by their teacher(s) and will recognize unfair treatment.

Other obstacles may include:

1. Trauma-can impede the ability to learn and cause fear of people in positions of authority (such as teachers and principals)
2. School drop outs-due to self-perceptions of academic ability, antisocial behaviour, rejection from peers and/or a lack of educational preparation prior to entering the host-country school. School drop outs may also be caused by unsafe school conditions, poverty, etc.
3. Parents-if parental involvement and support is lacking, a child's academic success may decrease substantially. Parents are often unable to provide the necessary emotional support for their children due to the traumas they have faced themselves. Important to note is the fact that parents are also oftentimes unable to help their children with homework due to the existence of a language barrier. Researchers have also noted the likelihood of parent's spiritual beliefs influencing their decisions and behaviours for their involvement in their child's education. Similarly, parents will often not understand the concept of parent-teacher meetings and-sometimes as a result of their cultural beliefs-they never expect to be a part of their child's

education in the first place. On another note, a refugee child's attempts to quickly assimilate into the culture of their school can cause alienation from their parents, creating further barriers and tension between the parent and child. This gap may cause children to isolate themselves completely from their family by turning to gangs, drugs, etc.

4. Social and individual rejection-hostile discrimination can cause additional trauma when refugee children are treated cruelly by their peers
5. Identity confusion
6. Behavioural Issues-caused by the adjustment issues and survival behaviours learned in refugee camps

Developments

Role of teachers

Though many obstacles remain in place, there has been significant work done to aid refugee children in their transition within the North American school systems throughout the past few decades. Given their position as authority figures, researchers have considered the role of teachers and parents in this transition process and made suggestions to improve the effectiveness of their guidance. Schools are the agents of acculturation and ultimately help children to become "absorbed" into society. With respect to the role of teachers, two strategies have been commonly suggested throughout the literature which would ultimately serve educators to effectively aid in the transition process. The two strategies suggested within the literature concern helping children deal with the trauma they have faced alongside supporting their academic adjustment.

According to such scholars as Judit Szente, one of the most important things to do it is to establish and encourage communication, not only between student and teacher but also between different students. The following strategies can be used to promote communication :

- expressive activities such as art and dancing that allow children to express emotion

- pay special attention to positive body language
- learn some basic greetings, such as "hi" or "thank-you" in the child's native language, as this will add an additional level of comfort and safety
- provide a wealth of literature that non-refugee children could read to help educate them on their classmates experiences

The suggestions listed above are also linked to a study of 76 Somali adolescents who have been resettled in the United States. This study indicates that a greater sense of school belonging (i.e. commitment or involvement within the school) has proven to be connected with lower rates of depression but has not been linked to dealing with the adverse effects of PTSD (as this is linked so closely with their pre-migration trauma). However, the overall conclusion of this study suggests that increased school involvement and social interaction between students could help refugee children combat depression and/or other underlying mental health concerns that could emerge during the post-migration period.

Supporting the academic adjustment of refugee children

Refugee children, given the many obstacles that they are required to overcome, can have a difficult time adjusting or settling in at their new schools. As such, researchers have suggested ways in which teachers can work to make this transition easier and raise the levels of academic success across the refugee population within North America. One suggestion is to provide translators or interpreters, either from local colleges or universities, as this will open the lines of communication. In addition, teachers are encouraged to work with their school administration to create specific policy plans for refugee children. Refugee children will benefit from a greater focus on a case by case approach to learning, because every child has had a different experience during their resettlement. Finally, communities where refugee populations are higher should work with the schools to initiate after school, summer school, or weekend clubs that give the children more opportunities to adjust to their new educational setting.

Research has indicated that bicultural integration was the most beneficial mode of acculturation (i.e. the adopting of the

behaviours of another culture) for refugee adolescents; therefore, it is important to provide bilingual education and cultural training for teachers as well as intercultural activities for U.S. born and refugee students. Additionally, the staff of the school must "...understand students in a community context and they must respect cultural differences for academic success." Research has continued to show that providing a welcoming atmosphere for refugee students can help prevent the spread of any feelings of isolation that he or she may encounter. It is also clear that parental support, refugee peer support, and welcoming refugee youth centers have been successful in keeping refugee children in school for longer periods of time. It may also be helpful for teachers to educate themselves about the refugee experience. This can help the teacher to relate better with the refugee children and to become more knowledgeable about the traumas and issues a refugee child may have experienced. More importantly, it is beneficial for teachers to build a strong relationship with their refugee students in order to replace any stereotypes that they may have and to gather a more tangible appreciation and understanding of who they are as unique individuals.

Refugee Women: The Authentic Heroines

Refugee women and their dependent children account for 80 per cent of the world's refugees. But who are these women and what problems do they face? Refugee women come from all corners of the globe. Often they come alone, flooding the substandard refugee camps set up in neighbouring countries. Their husbands, sons and fathers have been imprisoned, disappeared or killed in battle leaving them to fend for themselves. At best these women face long hours of menial employment and a spartan roof over their head; at worst they face rape, starvation, disease and death. For the lucky ones, respite is finally gleaned when they are granted refugee status by Western countries. But even then, the suffering of refugee women is far from over.

Between 1991 and 2001, 61,590 females have arrived in Australia under the Refugee and Humanitarian program. This represents only 48 per cent of the country's total refugee intake during that period. Of these women, 2,419 are have been admitted under the 'Women at Risk' category.

Women's Experience of Torture and Trauma

Widespread violations are perpetrated against refugee women from the political prisoners of Iran and Latin America to civilians in the former Yugoslavia and Afghanistan, where half the population is kept behind the veil (Purdah).

Refugee women are arrested, abducted, imprisoned, persecuted, tortured, raped, sexually abused and sold for prostitution. They are often stripped naked, given electrical shocks on their vagina and breasts, burnt on the nipples, hanged and tied from the breasts, and forced to witness torture of other prisoners, especially torture of close relatives. Other forms of torture inflicted on refugee women include exposure to extremes of hot and cold temperature, food and light deprivation, a prohibition on seeing their own children, mock executions, bashing with electrical cables and belts and public stoning or beating.

The UNHCR estimates that 80% of all refugee women experience rape and sexual abuse, which are used as weapons of war. In this context, sexual assault and rape not only affect individual survivors but also the family and the community to which the survivor is related. It is designed to humiliate and destroy women targeted because of their ethnic, religious, racial, or political identity.

Eileen Pittaway discusses the purpose of rape in her article 'Refugee Women: The Unsung Heroes': "Women are raped to humiliate their husbands and fathers, and for reasons of cultural genocide. They are forced to trade sex for food for their children. They are raped by the military, by border guards and by the UN peacekeeping forces sent to protect them. Rape and sexual abuse is the most common form of systematized torture used against women, and this ranges from gang rape by groups of soldiers, to rape by trained dogs and the brutal mutilation of women's genitalia."

During the war in the former Yugoslavia, mass rapes were perpetrated with alarming frequency: between 1992-1995 it is estimated that around 30,000 to 50,000 women were raped. Chilean women who opposed Pinochet's military regime were repeatedly raped by government officials and imprisoned until they became

pregnant and gave birth. Women are also at risk of being raped during the escape from their country of origin. For example, hundreds of Vietnamese women were raped by pirates as they fled their country in boats across the seas of Thailand.

In refugee camps, single women may experience sexual harassment both from men who live locally and from fellow refugees. In Dadaab refugee camp in Kenya and Lukole refugee camp in Tanzania, women searching for firewood on the camp outskirts have been subjected to rape by local bandits. In Pakistan, Afghan widows are held in isolated areas controlled by Afghan guerilla leaders and are forced into arranged marriages with guerilla fighters.

Despite a high incidence of sexual assault and rape amongst refugee women, the crime is often shrouded in silence. Due to stigma, shame and guilt associated with loss of virginity or purity it is difficult for women to reveal their horrific experiences. This tendency is more pronounced in some cultures, such as Middle Eastern cultures, where a woman's virginity is a prized possession and sex out of marriage is forbidden.

During the five years I worked as a doctor in Afghan refugee camps in Pakistan, none of my female patients ever reported a sexual assault and rape although there was much anecdotal evidence to suggest that such events were occurring among the camp population. Similarly, a study held in Winnipeg, Canada, found that over 94% of refugee sexual abuse survivors did not disclose their experiences to their refugee workers.

For some women the threat of rape is so ominous that they have committed suicide to avoid it. For instance, several women in the Shamali district in North Afghanistan killed themselves in a hot tanoor (a clay oven) because they feared being raped by Russian soldiers attacking their village.

Several other women were killed by their male relatives because they were in danger of being raped by the invaders. They felt that having a female relative who was raped would bring a lifetime of shame and wounded pride. Amnesty International also documented similar cases, which had happened during the civilian war in Afghanistan.

Bearing Loss

Refugee women often experience the unnatural deaths of numerous family members including children, husband, and other male supports such as fathers and brothers. They also experience loss of identity, homeland, property culture and social status.

In Rwanda, 90% of the householders are women, due to death or imprisonment of their husbands. A study conducted in Afghanistan found 84% of women reported one or more family member killed in the war. In another study conducted in a Cambodian refugee camp in Thailand, 80% of women had lost more than one child in the four years prior to the survey. Research carried out in Sudan in 1985 found that 34% of women had lost one child in the past four months.

Because husbands and other male relatives have often been disappeared, imprisoned or killed in battle, women find themselves fleeing their country of origin alone or without the protection of a male relative. This makes them more vulnerable to rape and banditry. They often face a long journey through treacherous terrain where guerilla activity may be present.

Life in the Refugee Camps

Life in a refugee camp is not any easier for women refugees as they are still exposed to danger, starvation and death. Refugee women may find themselves the primary care giver of their family, responsible for the care of their children and the sick, disabled and elderly members of the family. Their time is occupied with the most basic tasks of survival: finding food, medicine and shelter. Women are often forced into low-skilled jobs to feed their children. Their pay is so low and conditions so tough that prostitution becomes a more viable option for some. There are limited opportunities for training and education for women and their children in the refugee camps.

Although some women are waiting for a peaceful repatriation when hostilities in their country end, many refugee women are hoping to obtain asylum in a Western country. But even the quest to obtain asylum becomes problematic when the refugee camp is located in a country where corruption is endemic. In Pakistan, for instance, it is extremely difficult for a woman to move freely in

a camp or in the residential area. This makes it hard for them to access foreign embassies or the UNHCR office to register their refugee status. (Cost of transport, inability to speak the local language and lack of childcare are other barriers). Even if they are lucky enough to reach those centres they face corrupt officials who will only process their claim in return for bribes. For an empty-handed refugee woman, money for bribes is impossible to procure. As a result many women stay in refugee camps for years, cut off from the world.

Eileen Pittaway describes women's lives in refugee camps: "...They wait in substandard situation divorced from their culture and from all they have known, watching their children grow without the education training and socialization necessary to equip them to deal with the world. They know that they are becoming de-skilled as the world moves on, and they do not move with it. Self-esteem shrinks as the days pass."

Physical Health of Refugee Women

Both in exile and in the war torn country, refugee women's physical health deteriorates significantly. However, the extent of these problems is different from camp to camp and it is related to preexisting problems, culture, religion and level of international support. Inadequate diet, chronic malnutrition, chronic infectious diseases, repeated pregnancies and unhealthy and poor hygienic environments are the cause of much ill health in refugee women. Other factors involved in poor health include overcrowded living conditions and a lack of access to immunization, health care facilities and education.

Women have less access to medical facilities in refugee camps than men as most medical practitioners in the camps are male and in many Islamic cultures it is unacceptable for a female to see a male doctor. Further barriers to medical care exist in many war-torn countries. A study of women who lived in the Afghan capital, Kabul, prior to 1996 found that 77% experienced poor access to health care services there and an additional 20% had no access. Eleven per cent said curfews prevented them from seeking medical care. Women experience a high incidence of cervical cancer and sexually transmitted diseases due to lack of screening facilities. In

Afghanistan, infectious diseases are very high among women, for example, 70% of all tuberculosis cases are detected in women.

Mortality and morbidity during childbirth are common, both in refugee camps and in war-torn countries, due to a dearth of professional assistance and proper hygienic practice at delivery. For example, in Afghanistan trained health workers attend only 9% of all deliveries and more than 90% of babies are delivered by relatives. The maternal mortality rate is 1700 out of 100,000 live births which is among the highest in the world. The overall life expectancy of Afghan women is 42, the lowest in the world.

The death of a 20 year-old Afghan refugee women in a camp in Peshawar, Pakistan, still disturbs my memories. She died of massive bleeding on the way to a health clinic after she gave birth to her first child in her tent. She was just one out of hundreds of women that cannot even get out of their houses to seek medical assistance.

Many refugee women are fleeing countries in the Middle East, South East Asia and Africa, which practice female genital mutilation (FGM). The incidence of FGM varies from country to country but ranges from about 90% in Somalia, Djibouti and Sierra Leone to around 30% in Senegal. FGM is a traumatic procedure usually performed without anaesthetic and in unsanitary conditions. As a result, many women who have experienced FGM suffer lifelong health problems such as repeated urinary tract infections, stones in the urethra and bladder, growth of scar tissue at the site, cysts and chronic pelvic infection resulting from obstructed menstrual flow.

The Psychological Impact of the Refugee Experience

Refugee women can suffer from a variety of psychological problems ranging from minor anxiety and depression to severe post traumatic stress disorder (PTSD) and psychosis. In cases of rape and sexual assault feelings of dirtiness, fear, flashbacks, nightmares powerlessness, shame, guilt, loss of confidence and self-esteem, depression and anxiety are predominant. Furthermore many rape survivors experience various gynaecological problems such as menorrhagia (excessive menstruation), dysmenorrhea (painful menstruation) or amenorrhea (absence of menstruation),

which stem from their feelings of psychological distress. Psychological problems among women refugees are often somatised, or expressed in the form of physical problems, if it is culturally inappropriate to express emotion. This is the case in many non-Western cultures where psychological problems bear a lot of stigma and sufferers may be labelled 'mad'.

Refugee women also experience intense bereavement and grief over the deaths of loved ones. This is exacerbated when numerous relatives and friends have died, as is often the case in war-torn countries.

In refugee camps the psychological problems of residents are often under-estimated or ignored due to more urgent physical health problems and the basic tasks of survival.

Settling in a New Country

Women who are granted refugee status in a new country arrive with the hope of putting together the pieces of their scattered lives. Yet they now face the daunting task of adapting to a new culture and society that is very different to anything they have ever known. Refugee women can find themselves overwhelmed with a multiplicity of settlement problems such as language difficulties, financial problems and a lack of knowledge about public transport, housing, employment, the legal system, education and other services.

While refugee men have greater opportunities to socialize and learn the language of their new country, refugee women are often left isolated looking after their children and completing house duties. They lose the traditional social support provided by the extended family and social gatherings.

Continuation of war in their homeland, destruction of their community, concern about scattered family members and changes in the structure of their family are other challenges faced by refugee women. Single mothers also carry the burden of raising their children by themselves. They may be forced to work in low-skill jobs to support their families.

Some refugee women become the victims of domestic violence as their husbands, who are also deeply traumatised, are unable to control their anger and subject their family to violent outbursts.

In many instances, this is not spoken about as women do not know their rights and may come from cultures where women are considered the property of their husband and thus unable to complain. Refugee women find themselves coping not only with their own traumatic memories, but also the ongoing trauma of their husbands' violence.

Refugee women have special needs and require specialized assistance that is provided by STARTTS and other torture and trauma treatment services around Australia. In a new country, the needs of refugee women are best identified by a comprehensive assessment of their physical and psychological problems and settlement difficulties. Supportive counselling in a safe and culturally appropriate environment allows them to explore the depth of their suffering and heal their wounds. Along with practical assistance, such as housing and employment-seeking skills, this helps to give them the safety and financial security they deserve.

Inspired by the strength of refugee women settling effectively in Australia, I believe they are not a burden on the Australian society. Although, they may look empty handed they enrich Australia with their strength, wealth of experiences, knowledge and skills. Refugee women are the battlers, the survivors, and the true heroines of the war.

Nooria Mehraby is a STARTTS' bicultural counsellor for the Middle Eastern communities.

Refugees :India and International Laws

Need for Domestic: Refugee Law

India now needs to consolidate, streamline and harmonise into legislation, its long tradition and experience in accommodating the inflow of refugees and its commitment to uphold the principles of international human rights writes Advocate Anil Shrivastav

A refugee is someone who is outside his country of origin and has a well founded fear of persecution because of his race, religion, nationality, membership in a particular social group, or political opinion; and is unable or unwilling to avail himself of the protection of the country, or to return there for fear of persecution”.

This definition of a refugee appears in the 1951 Convention, relating to the status of refugees. The Convention details refugee rights. Although some refugee rights may be restricted under certain circumstances, as indeed may citizens rights, some of the important rights set up in the Convention include: non-discrimination (Article 3); freedom of religion (Article 4); free access to the courts of law on the territory of all States Parties to the Convention (Article 16); free movement within the territory (Article 26); and most importantly, the right not to be expelled from the country unless the refugee poses a threat to national security or the public order (Article 32).

Article 32 of the Convention contains the most important rights of a refugee, which is the right to be protected against forcible return, or *refoulement*, to the territory from which the refugee has fled. In fact, it is widely accepted that the prohibition

of refoulement is a part of customary international law. That means that all States must respect the principle of non-refoulement, even if they are not party to the 1951 Refugee Convention. In addition to the rights set forth in the 1951 Convention, refugees, like any other human being, enjoy basic human rights.

These rights are described in various legal texts that have been signed and ratified by numerous States. Among the most important of these texts are: the International Convention on the Elimination of all Forms of Racial Discrimination (1965); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and the UN Convention on the Rights of the Child (1989).

Domestic Law

India is not a party to the 1951 Convention on the Status of Refugees. This, however, does not mean that India refuses or is reluctant in acknowledging the rights of refugees. India is a signatory to other UN Treaties and Covenants such as the Covenant on Civil and Political Rights, Convention on the Rights of the Child, the 1948 Universal Declaration of Human Rights etc., which contain provisions which are directly related to the rights of refugees. Even though in India, the Foreigners Act of 1946 contains provisions for prohibiting, regulating, or restricting the entry of foreigners into India, as well as provisions for their expulsion from India, and even though the international Covenants to which India is a signatory have not been enacted into Indian law (thus rendering them not enforceable in Indian Courts), Courts in India have always adopted a liberal approach in taking into account the international Covenants, while interpreting the statute law.

In the celebrated case of *Vishaka Vs. State of Rajasthan* [(1997) 6 SCC241], the Supreme Court has held that "In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity.... Any

international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51 and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with entry 14 of the Union list in the Seventh Schedule to the Constitution."

So far, courts have taken the view that the rights of foreigners are limited to those contained in Article 21 of the Constitution of India: *Louis De Raedt Vs. Union of India & Ors* (1991) 3SCC 554 . In the context of refugee rights, it necessarily follows that Article 21 encompasses the principle of non-refoulement, since the forcible expulsion or deportation of a refugee to a country, where his life or freedom is threatened on account of his race, religion, nationality, political opinion or affiliation, would be violative of the constitutional scheme, provided for in Article 21.

The Andhra Pradesh High Court, speaking through Chinnappa Reddy, J has held (AIR 1974 AP 313) that a foreign national, though entitled to equality before the law and the equal protection of the laws guaranteed by Article 14 of the Constitution, is not entitled to the protection of the fundamental rights guaranteed by Article 19(1) (d) and (e).

In another case, the Supreme Court directed that a foreign national, undergoing life imprisonment, be permitted to visit his/her home country for one year on humanitarian grounds, subject to filing of an undertaking and security from her parents. The Guwahati High Court (Civil Rule No. 1847/89) directed the release of an under-trial prisoner for two months to enable him to go to Delhi to seek political asylum from the United Nations High Commissioner for Refugees.

In the case of *National Human Rights Commission Vs. State of Arunachal Pradesh* [(1996) 1 SCC 742], the Supreme Court has held that our country is governed by the rule of law and the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise. The Court further held that the State cannot permit any body or group of persons to threaten the Chakma

refugees to leave the State, and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations.

Need for Domestic Legislation

In India, refugees, like all foreigners, have free access to the Court for the protection of their life and liberty. India does not discriminate between refugees on the basis of race, political affiliation or religion. All refugees have the complete freedom to practice their religion. However, in the absence of a specific municipal law incorporating and protecting the rights of refugees, it is left to the courts to read the provisions of the international human rights instruments into the provisions of Articles 14, 21 and 25 of the Constitution. The zeal of the Court to protect the rights of refugees, though commendable, has its limitations. The dangers of judge-centric solutions are that in many cases the outcome of the case would depend on the outlook of a particular judge to the issue before him. There indeed cannot be any certainty or uniformity in judicial activism. There is, thus, an urgent need for a legal framework to provide for the protection, rehabilitation and repatriation of refugees. The attempt, so far, to fill the void by judicial creativity and activism, has only been temporary. No doubt judicial creativity has, to some extent, minimised the rigours of the refugees, but legislation alone will provide an effective and permanent solution.

Today, India has nearly five lac refugees comprising of Bhutanese, Tibetans, Afghans, Sri Lankans Tamils, Chakmas, Sudanese and Iraqis. In addition to these there are lacs of Bangladeshi migrants living illegally in India in search of food, shelter and livelihood. All these foreigners, whether refugees or illegal migrants, are dealt with under the provisions of the Foreigners Act 1946, which gives unfettered, absolute and unlimited powers to the government to expel foreigners. While it is eminently necessary to expel the illegal migrants by using the machinery of the Foreigners Act, yet the same absolute power of expulsion and deportation to the country of origin could prove disastrous in the case of a refugee who faces a threat to his life and liberty in his original country. There is an urgent need for India to incorporate its various treaty obligations in the domestic law of the land, to make their obedience by the executive enforceable directly. It is

time now to provide for an appropriate legal framework, to process matters in respect of determination of refugee status, protection from refoulement, and treatment during their stay as refugees.

Such a legal framework can make provisions for the following:

- A person shall be excluded from refugee status if he or she is convicted for a crime against peace, a war crime, or a crime against humanity;
- no refugee or asylum seeker shall be expelled or returned to a place where there are reasons to believe his or her life or freedom would be threatened;
- where an application is made by an asylum seeker for the determination of refugee status, pending such determination, he shall not be deported nor any restrictions imposed save and except those that are necessary in the interests of sovereignty and integrity of India or maintenance of public peace and order;
- the determination of refugee status shall be by a Refugee Committee to be presided over by the Commissioner of Refugees who shall be a sitting or retired High Court Judge;
- during the determination of his refugee status, the asylum seeker shall be entitled to all assistance including that of an interpreter and legal practitioner;
- and an appeal shall lie against the order of the Refugee Committee.

While India has a human rights law regime, an effective National Human Rights Commission and an innovative, creative, and activist judiciary, yet now there is urgent need for a domestic refugee law regime. India now needs to consolidate, streamline and harmonise into legislation, its long tradition and experience in accommodating the inflow of refugees, its faith in the principles of non-refoulement, and its commitment to uphold the principles of international human rights.

LEGAL CONDITIONS OF REFUGEES IN INDIA

Indian approach to refugee protection deserves special mentioning as it holds within her boundary about 3,30,000 refugees

without any formal obligations based on international documents. But from the human rights perspective the lack of specific refugee legislation or formal recognition of 1951 Convention on Refugees or the 1967 Protocol has led to varying treatment of different refugee groups within the territory. The status of refugees in India is governed mainly by political and administrative decisions rather than any codified model of conduct. Still India is renowned as a refugee-receiving country than a refugee-producing country.

LEGAL FRAME WORK FOR THE PROTECTION OF REFUGEE IN INDIA

The main approach adopted in India is to treat the refugees under the laws applicable for all foreigners. But there exist a considerable difference between a refugee and a foreigner. The 1951 Convention on Refugee defines the group as those who have fled from their home country owing to well-founded fear of persecution on race, religion, nationality, membership of a particular social group or political opinion and is unable or unwilling to return to his country because of that reason. But ordinary foreigners are quite different category. They may include temporary residents, tourists or travellers. They come to India for specific purpose with the prior permission of Indian Government. They may turn as refugees if during their stay in India the circumstances in their homeland turned as equal to that of 1951. There is yet another category like illegal economic migrants who intrude into our borders solely to improve their economic prospects without any formal authorisation from both the country of origin and destination. Another threatening group are that of criminals, spies, infiltrators, militants etc. They will be dealt with Indian criminal laws or special laws even if they have a valid travel document. If all these categories of people are handled with the same legislation there is bound to be disparities and injustices.

In the absence of a specific statute often the plight of the refugees are decided based on the Foreigner's Act drafted as early in 1946, the Emigration Act, 1983 and the rules framed there under, the Passport Act 1967 and above all the Indian Constitution under Art 21. In India the major law enforcing agencies which will deal with the refugees on the first hand are the security personnel

at the border, the immigration personnel at land check post, international airport and the seaport, and the State Police personnel. But till date it generally confirms to the international documents for the protection of refugees. The status of refugees in India is governed mainly by political and administrative decisions rather than any codified model of conduct. The ad hoc nature of the Government's approach has led to varying treatment of different refugee groups. Nowadays there has been stringent approach in dealing with foreigners due to security concerns. This has resulted in genuine refugees paying an unfortunate price in a country that otherwise has an impressive history of protecting refugees. Through this paper I am trying to evaluate the implications of each Act with reference to the genuine refugee.

THE FOREIGNERS ACT AND ITS APPLICATION TO REFUGEES

The Foreigners Act is an archaic legislation that was enacted by a colonial government in response to the needs of the Second World War. The Act primarily deals with the stay and exit of foreigners in India.

Section 2(a) of the Act defines a 'foreigner' as "a person who is not a citizen of India", thus interpreted as covering all refugees within its ambit. Through this Act the Central government is empowered to make order for prohibiting, regulating and restricting entry of foreigners into India, their departure there from and presence/ continued presence. The types of possible restrictions are 1) no entry or departure 2) entry only at such time only by such route only at such port/place. 3) Observance of such conditions on arrival. There are a number of such Orders in force that restrict the movement, activity and residence of foreigners; and, require their proof of identity and regular appearance before the police. The Act invariably gives wide powers to the executive to refuse entry if the foreigner do not fulfil the entry conditions and may resort to instant deportation. This is often in contravention with the non-refoulement which is practiced by members who are signatory to international documents and may seriously affect the rights of a genuine refugee. In Hans Muller of Nuremberg the Supreme Court affirmed that

"The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains."

Even after thirty five years the judiciary was reluctant to read humanitarian principles into this approach and the situation continued in *Louis de Raedt v. Union of India* and *Sarbananda Sonowal's* case. Later some how the Court extended the Article 21 of Indian Constitution to take hold of the non-refoulement principle. The other highlights of the Foreigners Act are 1) Section 5 prevents foreigners from changing their name while in India 2) Section 6 requires masters of ships and pilots of aircraft to maintain records of travelling foreigners 3) Section 7 obliges hotel-keepers to maintain records of the stay of foreigners 4) Section 9 places the burden of proving that a person is not a foreigner on that person 5) Section 12 provides for the delegation of these powers; and 6) Sections 14, 14A and 14B penalise foreigners and abettors found in contravention of the Act or any Order made there under.

The 175th Law commission report on the Foreigner's Amendment Bill 2000 put forth suggestions to harmonise the punishment provisions in Foreigners Act and Passport Act. It suggested for the immediate deportation of the foreigner and establishment of a grass root level mechanism to monitor the entry of foreigners.

PRINCIPLE OF NON-REFOULEMENT UNDER INDIAN LAW

Refugee rights under the Convention and Protocol consist of two primary components. First, the principle of non-refoulement, which prevents the states from returning a refugee to his or her home country where he has a well-founded fear of persecution. It is often considered as the duty of the host state than as a right of the refugee. Second relates to those rights available for the refugee which affects his day to day life in the host country. These like the right to education, the right to hold property, etc. The later rights arise only when the first principle is exercised. The lack of a specific statute for dealing with refugees or formal obligation under international documents gives an impression that India is

not under a formal duty to follow the principle of non-refoulement. But there are three arguments which say that indirectly Indian system provide a mechanism to retain the refugee on his arrival in the Indian territory. One is the working of legal institutions like UNHCR and the NHRC which prevent the return of valid refugees to their home Countries. Another attempt is to read it under Art 21 by laying down that the State shall not expel or return a refugee in any manner what so ever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion for it may turn out to be unfair unjust and unreasonable. Another view is that the Constitution under Article 51 automatically incorporates the international rule of non-refoulement into India's domestic laws.

CONSTITUTIONAL PROTECTION TO FOREIGNER'S

Foreigners are entitled to some degree of constitutional protection while in India. These include the protection of the equality clause [Article 14] and the life, liberty and due process provisions [Article 21] of the Indian Constitution. By the permissible classification criteria the executive can very well classify among the different categories of foreigners. Thus refugees are supposed to get preferential treatment from the law enforcing agencies. The plight of a foreigner/refugee after he is given a shelter is well taken care of by the various statutes applicable to aliens and they very well confirm to the international standards. But the major concern is his entry to the country on arrival at the border. In 1996, the Supreme Court in *National Human Rights Commission v. State of Arunachal Pradesh* intervened with a liberal interpretation of the law to suggest that refugees are a class apart from foreigners deserving of the protection of Article 21 of the Constitution. To quote from the judgment,

"We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or

otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so."

In the above case Court was rather concerned about the substantive and procedural aspect of Article 21 rather than the imperative right of the refugee for a non-refoulement. In spite of this judgment it is a fact that in the absence of an institutional framework one cannot fruitfully argue that State is obliged to follow the principle of non-refoulement in its dealings with refugees unless it is raised to the level of customary international law as alleged by some academicians. The argument is based on the fact that the principle is extensively practiced by the 137 countries who are parties to the international convention for the protection of refugees and is often advised to be followed by other countries too. So by the time it has raised to the level of customary international law as recognised by the majority international community.

EVIDENCE REQUIRED TO ESTABLISH A REFUGEE CLAIM

Since Indian law considers all non-citizen's as aliens it is rather difficult to prove the status of refugee if at all he is to get a better protection. He should carry sufficient document to prove grounds for the fear of persecution may be in the form of ID card of employment with some governmental agency/ ID card indicating membership in a group. The claimant must be able to establish all his statements to interviewing authorities in a consistent manner without discrepancies. There will be corroboration and confirmation of facts pertaining to persecution by the authorities. The authorities will gather background details from the government authorities or through the NGO's.

INDIA'S INTERNATIONAL COMMITMENTS

Even though India lacks a specific legislation pertaining to refugee protection it is a member to the Executive Committee of High Commissioner's Programme, 1995. EXCOM is the organization of UN which approves and supervises the material assistance programme of UNHCR. Membership in it indicates particular interest and greater commitment to refugee matters. India is a signatory to the UN Declaration on Territorial Asylum,

1967. There are contentions that India has accepted the principle of non-refoulement as envisaged in the Bangkok Principle 1966 which were formulated for guidance of member states with respect to matters concerning status and treatment of refugees.

MAJOR REFUGEE CATEGORIES IN INDIA

The major categories of refugees existing in India may be explained under three heads.

- 1) Those who receive full protection according to the standard set by the Government of India eg. The Srilankan Tamil refugees and the Jumma people from Bangladesh.
- 2) Whose presence in Indian territory is acknowledged by the UNHCR and protected under the principles of non-refoulement eg. Is that of Afgan, Somalian, Sudaneese, Burmeese etc.
- 3) Who have entered India and have assimilated into their communities. Their presence is not acknowledged either by the Indian Government or by UNHCR. Eg. Tribal refugees, Nagas from Burma.

India often raises her concern of indefinite legal responsibility for not signing the International Convention or the Protocol as the number of persons seeking shelter has increased over a period of time. The members are obliged to provide food clothing shelter and other basic life amenities which involve the spending of a considerable portion of country's economy. This might be other reason for abstaining from the international community in the matters of refugee protection. But it is an immediate necessity to review the possibility of according the principle of non-refoulement under the present legal system or a new procedural legislation to meet the situation. Once India signs the International document she has every chances of getting financial aid from the international community. An international consensus on the policy is the only way towards greater human rights approach.

Environmental Refugees: A case for including them within the ambit of International Refugee Law

In 1985, El Hinnawi identified a new class of persons, called as Environmental Refugees. He defined them to be those who

have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption that jeopardized their existence, and/or seriously affected the quality of their life. It is estimated that there are currently about 10 million environmental refugees world over. The concept of environmental refugees is a relatively new phenomenon. Environmental refugees are essentially people who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with associated problems of population pressures and profound poverty. In their desperation, these people feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt. Not all of them have fled their countries, many being internally displaced. But all have abandoned their homelands on a semi-permanent if not permanent basis, with little hope of a foreseeable return.

As the world delves deeper into the realms of technological advancements, the consequential environmental changes pose new challenges to international law. As predicted in the Intergovernmental Panel on Climate Change synthesis report the average temperature of the air and the sea, pollution and other symptoms of a changing climate will likely lead to a rise of the sea level, desertification, deforestation, extreme storms and earthquakes. There are an estimated 25 million environmental refugees today and the numbers are likely to grow even faster in future. The primary questions which have to be addressed in regards to the aforementioned issue are:

- If the Environment is sometimes linked with other reasons for leaving a state, what legal status can an environmental refugee be given?
- Has the term environmental refugee to be included in the Convention in order to fit international human rights law?
- How feasible is a separate genre of environmental poverty law, in dealing with the issue of environmental refugees?

Environmental Hazards + People = Environmental Refugees

El-Hinnawi identified three broad categories of environmental migrants: persons who are displaced temporarily, but can return

to their home when the damage to the environment is repaired; persons who are permanently displaced and have resettled elsewhere; and persons who migrate from their original home in search of a better quality of life when their original habitat has been degraded to such an extent that it does not meet their basic needs. The international community has been urged to officially recognize environmental refugees and to better understand the causes of environmental migration. It would seem a truism to note that the grave consequences of environmental hazards affect the economically and socially backward segments in society. In particular, it is sometimes difficult to differentiate between refugees driven by environmental factors and those impelled by economic problems. In certain instances, people with moderate though tolerable economic circumstances at home feel drawn by opportunity for a better livelihood elsewhere. They are not so much pushed by environmental deprivation as pulled by economic promise. This ostensibly applies to many Hispanics heading for the United States.

A simple example to denote the situation shrouding this segment of people is in order. A tribal community living in the deep jungles of a state, bearing minimal contact with the outside world, is driven to move out of the forest region, out into the neighbouring state, on account of the flooding of a nearby meandering transboundary aquifer, on account of the dumping of effluents and global warming. Imputing responsibility to any one state or any one entity is virtually impossible, on account of the principle of Common but Differentiated Responsibility. What, then, can the second state do with the sudden influx of refugees? Can there be room for the new influx? Is it culturally, socially, economically or politically easy for the community to adapt?

In short, there is a gradient of factors at work. At one end are those people who are driven by environmental problems outright, and at the other end are economic migrants who are voluntary opportunists rather than refugees. In between is a grey zone where one category sometimes tends to merge into the other. The assessment to date is no more than a first-cut effort, albeit preliminary and exploratory, to come to grips with a prominent and fast-growing problem that is all too real for those who endure

it, however much the purists may argue about final definitions. Above all these sub-problems is the lack of official recognition, whether on the part of governments or international agencies, that there is an environmental refugee problem at all. A large number of these situations are created with the accumulation of several years' worth of pollution and environmental destruction, and is not a one time or a one cause event. As a consequence, it sparks off a chain of events, intricately weaving a web of social, political, economic and cultural effects. For all practical purposes, it would thus, be imperative for the implementation of a stringent law to settle the issue.

It is difficult to distinguish among the different causes of displacement, because, as stated earlier, displacement occurs due to a combination of several factors. A general consensus among scholars on five broad causes of displacement-natural disasters, long-term environmental degradation, development, industrial accidents and remnants of war.

Natural Disasters

The term 'natural disasters' refers to events such as volcanic eruptions, droughts, earthquakes and all other types of disasters generated by an unstable natural environment. Natural disasters have been a major cause of migration throughout history. It is estimated that between 1973 and 1997, about 3.6 billion people were affected by natural disasters. The 1990s were declared to be the International Decade for Natural Disaster Reduction by the United Nations, with an aim of preventing the contribution of man-made activities towards causing certain kinds of natural disasters. However, there has been a sudden surge in the number of natural disasters, as depicted by the Geoscience Division of the Munich Reinsurance Group.

This is partly due to the global temperature anomalies such as the El Nino and La Nina effects. The focal point is that natural disasters disproportionately affect Africa, Asia and South America. Research shows that 96% of all deaths from natural disasters occur in developing countries. Most countries in the aforementioned regions are amongst the poorest in the world. Combating natural disasters clearly, thus, requires a better policy alternative. Because

natural disasters constitute only one of the many causes of environmental migration, the development of appropriate policy priorities depends on the quantification and the classification of the broader problem of environmental displacement.

Industrial Accidents

There are a plethora of examples of industrial accidents causing large numbers of persons to be displaced. The infamous Bhopal Gas Tragedy witnessed a chemical accident that killed over 1000 people and displaced over 200,000 people, many of whom are still reeling under the after effects. A nuclear accident at Three Mile Island in the United States of America displaced 10,000 people. In Seveso, Italy, an explosion at a chemical factory released chemical compounds akin to defoliants in Vietnam, into the atmosphere. The Chernobyl incident witnessed the evacuation of thousands of people by the Russian government. Till date, a thirty-mile radius around Chernobyl remains uninhabited. Radiation contamination, possessing a half-life of about 25,000 years, assures contamination forever. Most cases ensuing from the displacement of individuals out of industrial accidents depicts instances of seeking refuge within the borders of the country itself.

Armed Conflicts

War stands at the centre of environmental destruction. This occurs because environmental destruction is itself used as a weapon of war, and most conflicts originate from disputed claims for natural resources and land. An example explaining the former is the war in Vietnam, where the US resorted to the deliberate military tactic of destroying the environment. The countryside was emptied and people were forced to migrate to the urban areas. A massive campaign of deforestation resulting in the use of herbicides and the bombardment of agricultural zones soon followed suit. Another example of the same is the case of El Salvador, in the early 1980s, where the destruction of the environment was resorted to in order to eradicate guerrilla bases in the forests. The Gulf war depicted a case of ecocide, too, where oil fires and spillages by Iraq in Kuwait destroyed the environment. In what was deemed a historical move, the United Nations Security Council, in the context of the Gulf War, had passed Resolution 687 on April 3rd 1991, reaffirming

that Iraq was liable under international law for any direct loss or damage, including environmental damage. More recently, the Rome Statute of the International Criminal Court, entered into force on 1st July, 2002, listed the launching of long-term and severe damage to the natural environment as a war crime.

An example of the fact that the conflict itself originates with the environment and its allied resources as a focal point, would be the case of Gaza and Israel. According to the World Bank, 90% of the water in the region is used for Israel's profit, while the Palestinians use only 10%. The seizing of resources results in economic marginalization caused by forcing people to move from fertile to less rich lands. The result of such conflicts is best evidenced by the example of Senegal. In 1989, close to 70,000 Mauritians were expelled from the valley of the River Senegal as a direct result of the seizure of natural resources.

Refugees or Not?

History is full of examples of people driven from their homes by a hostile environment – and it's increasingly hard to distinguish these factors from economic ones. Throughout the world, particularly the less developed rural countries, there's probably no meaningful difference – the environment is the direct source of people's livelihoods. But the scale and speed at which humans are altering the global environment has over the last two decades altered perceptions in two ways. First, there is a new awareness of environmental factors as the triggers for major population movements. Second, it's recognised that humans are pulling the trigger – that what were once considered "natural" disasters are increasingly man-made.

According to more recent estimates by Dr Norman Myers of Oxford University, by 2050 up to 150 million people may be displaced by the impacts of global warming, such as sea level rise – equivalent to over 1.5 per cent of 2050's predicted global population of around 9 billion. Global warming is, of course, a man-made phenomenon. Indeed, one of the ironies of the debate is the link between travel, climate change and migration. The improved access to trains, planes and other travel options – both commercially and for leisure purposes – is one of the main factors

driving Western economies' insatiable consumption of fossil fuels. That, in turn, fuels climate change, which ends up displacing people and causing more population movement. But it's also important to remember that while international travel may be cheaper and more accessible than at any time in history, the cost of a plane or train ticket is still well beyond the reach of the majority of the world's population. Western Europe and the US cannot continue to consume with impunity, without regard to their impact on the global environment. This means an historic act of facing up to the real cost of our lifestyle. It also means revising how we define, and what we mean by, the term "refugee".

Environmental Refugees

International humanitarian law mandates that there are four principal elements to the definition of the term refugee, as under the Refugee Convention. These essentials are herein enumerated:

- They must be outside their country of origin
- They must be unwilling or unable to avail themselves of the protection of their country or return there
- Such inability or unwillingness should be attributable to a well-founded fear of being persecuted
- The persecution so feared must be based on reasons of race, religion, nationality, membership of a particular social group, or political opinion.

Clearly, the definition does not evince room for the definition of environmental refugees. Another perception of environmental refugees warrants a brief distinction between an environmental refugee and an environmental migrant. While the former is compelled to flee by a sudden, drastic environmental change that cannot be reversed, the latter include people who make a voluntary, rational choice to leave their place of residence. While neither comes under the aforementioned essentials, it stands clear that the term *Environmental Refugees* stands out as a misnomer. The United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM), as also the Refugee Policy Group, have all opted out of using the term *environmental refugees*. Impetus is given, instead, towards using the term *environmentally displaced persons*. The definition given for this new

term is that they are persons who are displaced within their own country of habitual residence, or who have crossed an international border, and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.

The convention spells out what a refugee is, and the sort of protection they should receive – legal or social welfare, for example. According to the convention, a refugee is someone who holds a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or, owing to such fear, is unwilling to return to it.’

Many Western European governments have argued that “economic” and other migrants take advantage of the convention to make better lives for themselves outside their country of birth.

This is a controversial issue within the migration and refugee debate. Environmental reasons for granting refugee status are not currently listed in the convention, and there is resistance to categorising refugees on these grounds. The United Nations High Commission for Refugees (UNHCR) has consistently rejected the case for categorising the environment as a basis for refugee status, arguing that it must concentrate its limited resources on those fleeing political, religious or ideological persecution.

It is a workable idea to expand the existing definition under the 1951 Convention. The fundamental freedoms enshrined under it are echoed under the Universal Declaration of Human Rights. These rights are also echoed under the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights. Therefore, a solution to the problem of environmentally displaced persons would be to extend the 1951 definition contained in the Refugee Convention in line with the developments in Human Rights Law. However, the expansion of the definition would lead to much consternation. Some of these points are summarized herein.

- First, the expansion of the definition would lead to a devaluation of the existent protection of refugees. This is because, migration due to environmental factors is rarely a result of governmental oppression.
- Second, the vast majority of environmentally displaced persons are internally displaced because they are not fleeing State persecution.
- Third, only a limited expansion of the definition would be possible given the enormous number of environmentally displaced persons.

None of the definitions under international law, recognize the environment as a single cause of migration, and neither provides protection for environmental refugees. This is in line with academic writing on the subject that asserts that environmental change, as a cause of migration, cannot be meaningfully separated from political, economic and social changes.

Internally displaced persons

In 1998, the United Nations Secretary General's representative for displaced persons, Francis M.Deng, defined the term *internally displaced persons*, in the following manner:

Displaced Persons are persons or groups who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural human-made disasters, and who have not crossed an internationally recognized state border. No convention mentions the concept of displaced persons. One advancement, however, is that displaced persons are placed on the mandate of the UNHCR, since 1975. It is however, unfortunate that under international law, displaced persons do not form a juridical category. There is precious little benefit ensuing from according such people the status of displaced persons, for it is only a descriptive term, and does not confer a status warranting obligations from states.

Consequences of Environmental Migration

The consequences of the flux of environmental refugees among others, is further damage to the environment. The initial damage

to the environment begins in the refugee camps itself, where space is created by cutting down on foliage and forests, thereby creating more room for environment deprecation. All in all, the issue of environmental refugees promises to rank as one of the foremost human crises of our times. To date, however, it has been viewed as a peripheral concern, a kind of aberration from the normal order of things—even though it is an outward manifestation of profound deprivation and despair. While it derives primarily from environmental problems, it generates myriad problems of political, social and economic sorts. As such, it could readily become a cause of turmoil and confrontation, leading to conflict and violence. Yet as the problem becomes more pressing, our policy responses fall ever-further short of measuring up to the challenge. To repeat a pivotal point: environmental refugees have still to be officially recognized as a problem at all.

Aside of this, the newly migrated population lives in the throes of poverty, on account of having frugal means to get by with life. Some of the basic problems are herein enumerated:

- Refugees generally rely on natural resources in order to sustain themselves, certainly in the early period before the arrival of aid. This reliance will nevertheless continue in some form or the other, during the period of their stay outside their home countries. This poses a threat to the sustainability of natural resources and the environment in general as the use of the surrounding environment constitutes a major part of the livelihood of the refugees.
- The environment is subject to unsustainable use, threatening the livelihood of the refugees, and of the host population. Exhaustion of resources would undermine the willingness of the host populations to accept the presence of refugees.
- The presence of refugees on the host territory leads to poverty. Refugees are left with frugal resources after their exodus, it also stands to be true that several such segments of population find it socially and culturally difficult to acclimatize in the new environment. They are neither in a position to embark on work opportunities that put enough money in their pockets, nor so readily accepted by their

counterparts in the host country. At another level, the presence of refugees results in poverty among the host country's population. A reduction in available resources, job opportunities and basic amenities threatens the order in the daily lives of the host population.

- States would soon be driven to a point where the acceptance of environmental refugees becomes a matter of great difficulty. In essence, the immediate livelihood of people seeking to survive comes into conflict with longer-term and more global concerns of protection of endangered species or lands. However, these concerns can also be manipulated to prevent asylum seekers from crossing borders. For example, Turkey and Honduras have closed their borders to asylum seekers in the past citing environmental damage as their justification. Politics do not always hinge on environmental concerns, but it is politically expedient to blame refugees for environmental damage. There are limits to host countries' capacity, let alone willingness, to take in outsiders.
- The UNHCR has identified three environmental impact issues relating to the influx of refugees: the disproportionately high population densities often created in refugee settlements; the tendency to site camps in environmentally fragile areas; and the refugees' lack of incentive to conserve the environment, because the land where they live is not theirs.

Remedying the situation

There is much scope for preventive policies, with the aim of reducing the need to migrate by ensuring an acceptable livelihood in established homelands. First of all, an expanded approach towards refugees generally in order to include environmental refugees in particular, is necessary. If official standing were to be accorded to these refugees, this might help to engender a recognised constituency. While desertification entrains costs of \$42 billion a year just through the loss of agricultural produce, the United Nations' Anti-Desertification Action Plan would cost no more than \$22 billion a year. Yet the amount subscribed so far falls far short of the target, ostensibly on the grounds that arid-land dwellers

have no constituency and hence lack political leverage. Secondly, a widened and deepened understanding of environmental refugees by establishing the root causes of the problem is needed. Not only environmental causes but associated problems such as security concerns, plus the interplay of the two sets of forces, are to be understood. There are many conceptual grey areas as concerns proximate and ultimate causes, the contributory roles of population pressures and poverty, the linkages to ethnic tensions and conventional conflict, and so lengthily forth. Consider too the root causes of famine. If a famine has been human-made, it can be human-unmade, whereas natural factors can only be managed and accommodated.

Probably most important of all is that there can be little progress except within an overall context of what has come to be known as Sustainable Development. This applies notably to reliable access to food, water, energy, health and other basic human needs—lack of which is behind many environmental refugees' need to migrate. In big picture terms, sustainable development represents a sound way to pre-empt the environmental refugee issue in its full scope over the long run. There would be a handsome payoff on investment to foster Sustainable Development in developing countries through greater policy emphasis on environmental safeguards. A prime way to tackle desertification, salinization, in fact several sorts of land degradation, is through planting trees for shelter belts, to retain soil moisture, and to resist soil erosion. Certain types of trees offer additional benefits—leguminous species add nitrogen to infertile soils, or they supply built-in insecticides, or they offer industrial timber. Probably the biggest benefit lies with reforestation in montane areas, in order to rehabilitate hydrological systems and watershed functions, and thus avoiding floods and drying-outs for river systems downstream. All in all, and in whatever part of the world, restoring tree cover almost always presents an exceptional win-win outcome.

The epithet of 'environmental refugees' is a legal misnomer. The impracticalities that underlie the inclusion of the environment as a cause for the creation of refugees are plenty. It is not practical to advocate an extension of the definition of the term refugee to include those who are environmentally displaced. The significance

of the term lies in its application to environmentalist literature as opposed to asylum literature-highlighting the environment as a sole cause or consequence of large migration movements will increase interest in its protection. While there can be a link between the environment and migration, there is a lack of evidence that the environment can be a sole and substantive cause of migration, or that migration can have a direct and substantive impact on the environment. The focus must be on the environment-highlighting this category of people draws attention to the environmental causes and consequences of migration.

It signals the need to tackle the refugee issue preventatively, by seeking the cause of mass displacements. Preventable environmental damage is rarely the sole factor in large-scale migrations. There is a certain appeal in citing refugees as a reason for protecting the environment, and in citing the environment as a reason for protecting refugees. However, it has little practical benefits for either. What is of more practical import is to understand the relationship between people and the environment as a part of the analysis of the causes and consequences of the movement, rather than as the sole cause or consequence.

India's Failure to Adequately Protect Refugees

India is home to one of the largest refugee populations in the world. According to the U.S. State Department's *Country Report on Human Rights Practices for 1998*, 315,493 refugees were residing in India. The United Nations 1951 Convention Relating to the Status of Refugees (Refugee Convention) defines a refugee as a person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." The Indian government, however, has signed neither the Refugee Convention nor its Protocol, and Indian law does not offer any special language or provisions for refugees, despite the large number of them seeking India's protection. Under Indian law, the term "foreigner" is the only reference to aliens of any kind; this places refugees, immigrants, and tourists in the same broad category. The Indian government dispenses the assistance available to refugees in a discriminatory

and inequitable fashion. Indian laws, instead, should assist the refugees living within its borders in accordance with the international norms that the Refugee Convention established.

International Norms for the Treatment of Refugees

When a United Nations Member State signs the Refugee Convention or its 1967 Protocol Relating to the Status of Refugees (Protocol), it undertakes to apply the 34 rights and freedoms granted to refugees in the Refugee Convention. The Protocol updated the Refugee Convention by removing the geographic and temporal limitations that were originally written into the document. UN Member States that sign the Protocol are bound also to the definitions and rights in the Refugee Convention. The Refugee Convention presents standards dealing with discrimination on account of race, religion, or country of origin, as well as religious rights, property rights, right to association, access to courts, employment, welfare, housing, education, freedom of movement, identity papers and travel documents, expulsion, *non-refoulement*, and naturalization for refugees. The drafters based the list on the Universal Declaration of Human Rights, with the goal of assuring refugees' rights in their host countries. The world community now widely accepts these standards; as of October 1999, 137 countries have signed the Refugee Convention or its Protocol.

Although contracting states can add reservations to most of the articles, the drafters protected five rights and freedoms enumerated in the Refugee Convention from reservation: the refugee definition (Article 1), the obligation not to discriminate (Article 3), freedom of religion (Article 4), access to courts (Article 16(1)), and *non-refoulement* (Article 33). These provisions ensure that contracting states give people fleeing persecution the most basic assistance.

India has not agreed to any minimum standards for the treatment of refugees, and its policies towards refugees are without UN supervision. Moreover, India has rebuffed efforts from the United Nations High Commissioner for Refugees (UNHCR) and other international aid organizations to monitor and assist the Indian government with its refugee population. The Indian government repeatedly has barred access to many of the large

refugee populations in the country's interior; international assistance and -monitoring is occasionally granted for a very small number of refugees living in urban centers. The U.S. Committee for Refugees (USCR) 1998 Country Report on India cited that of the more than 300,000 refugees in India, only 18,500 have received UNHCR protection.

India's reasoning for not signing the Refugee Convention is the fear of indefinite legal responsibility for the vast numbers of persons seeking shelter. The Indian government does not believe it successfully can handle the requirements of the Refugee Convention, and such new pressures would damage the country's economic and social balance. Moreover, USCR cited the Indian government as viewing the Refugee Convention as burdensome on the host country, while the international community is inactive. In addition, the Indian government argues its current refugee policy is in line with international norms.

Signing the Refugee Convention, however, would not only bind India to the obligations in the Refugee Convention, but it also would allow for substantial international assistance from other UN Member States for thousands of refugees in India. India's argument that the Refugee Convention places the burden on the host state while the international community is idle is unfounded because signing the agreement would allow UNHCR to provide greater assistance to the refugee population, relieving India of the burden. India's current policy is not adequately assisting the refugees within its borders, and its failure to recognize refugees will not cause the population to decrease. Yet, the government is unable to move forward, instead preferring to handle refugee situations on an *ad hoc* basis.

Indian Laws Inadequately Protect Refugees

Although the Indian government claims that its policies conform to international standards, no Indian law refers directly to refugees. The Registration of Foreigners Act of 1939, the Foreigners Act of 1946, and the Foreigners Order of 1948, are the primary documents that control the treatment of all foreigners in India. Article 2 of the 1939 Registration of Foreigners Act defines a foreigner as "a person who is not a citizen of India." The

Foreigners Act of 1946 (Act) and the Foreigners Order of 1948 (Order) also use this definition of a "foreigner." Both the Act and the Order affirmatively give the Indian government the power to restrict movement inside India, to mandate medical examinations, to limit employment opportunities, and to control the opportunity to associate, as well as the ability to *refoule*, or "return," refugees. The Refugee Convention bars all of these actions.

Article 3 of the Order, the Power to Grant or Refuse Permission to Enter, lists some specific criteria for denying foreigners entry into India, such as requiring a valid passport and entry at a specified border location. In addition, the Indian government can -prohibit entry in an *ad hoc* fashion, by attaching "such conditions as it thinks fit to grant leave to enter." If refugees cannot meet certain technical criteria, such as possessing a passport, the Indian -government has the power to *refoule* them at the border, directly violating the Refugee Convention and customary international law. The U.S. Department of State, in its 1997 human rights report on India, cited examples of border authorities blocking entry to refugees without passports. Duplicating this power is Article 3(1) of the Act, which allows India to block entry of all foreigners. Once again, India does not have to consider any of the circumstances surrounding the person's request to enter, such as flight from persecution, but may "by order, make provision... with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, regulating or restricting the entry of foreigners." In this area as well, the Act violates the Refugee Convention.

Article 3(2) of the Act lists restrictions that the Indian government can place on refugees already living in India, further -violating the articles in the Refugee Convention. Article 3(2)(e) contains a list of nine broad orders regarding government regulation of rights and freedoms that the Refugee Convention guarantees. For example, India can require that foreigners reside in mandated areas. This restriction on movement enables India to confine foreigners to refugee camps and to conduct periodic camp inspections. Therefore, India can prohibit foreigners from associating with people it deems "inappropriate," prohibit select activities, and limit a foreigner's possessions. The language in

Article 3(2) of the Act is broad and the terms are vague. Consequently, the Indian government has wide latitude in deciding which rights and freedoms in the Refugee Convention should be granted or denied to different refugee groups. For example, when the Chinese Premier visited in 1991, Tibetan refugee camp leaders and activists were arrested, and most Tibetan settlements and community organizations were placed under police surveillance.

The Order, like the Act, limits the rights and freedoms outlined in the Refugee Convention. Article 11 allows India to control an individual's place of residence, movement, "association with any persons or classes of persons," and possession of any specified articles. Article 10 of the Order, Restrictions on Employment, highlights sectors of employment not available to foreigners, unless the foreigner obtains special government approval. In addition, the Order gives India the power to create new restrictions on employment as it believes necessary. Article 14, Expenses of Deportation, allows India to seize a foreigner's personal property to pay for their transportation and/or living expenses if India decides it should remove or deny entrance to the foreigner. Thus, these articles of the Order make movement, possessions, association, and employment of persons a "privilege" that India can revoke. This power contradicts the Refugee Convention's list of rights and freedoms that must be observed.

India's Refoulement Policy

India's ability to *refoule* persons seeking asylum in India violates international customary law on the treatment of refugees, as well as the standards codified in the Refugee Convention. As part of customary international law, the policy of *non-refoulement* prevents a country from expelling refugees to countries where their lives or liberties would be threatened. The majority of states, including the 137 signatories to the Refugee Convention, consistently practice *non-refoulement* in its determination of whether to grant entrance to people seeking asylum. Furthermore, states consider *non-refoulement* an obligation to all persons seeking asylum, regardless of whether they are in countries that are signatories to the Refugee Convention. Most states, regardless of whether they are parties to the Refugee Convention, hold that *non-refoulement* transcends the Refugee Convention and observe this rule. The practice of *non-*

refoulement by most states, as well as their respect for the policy as a legal obligation, has rendered *non-refoulement* customary international law. India consequently violates customary international law, as well as the Refugee Convention, when it returns groups at the border.

Incongruent Policy Toward Refugee Groups

India bases its treatment of various refugee groups on political grounds, resulting in an unstable and ever-changing domestic policy. India grants privileges to certain refugee groups based on bilateral and multilateral political relations with other states, as well as domestic political opinion. An examination of India's treatment of Tibetan refugees arriving in the 1960s and 1970s versus Tibetan refugees arriving since the 1980s provides an example of India's discriminatory policies. Tibetan refugees began to enter India in 1959, after Communist China's invasion of Tibet and its violent repression of a Tibetan rebellion, forcing the Dalai Lama, the spiritual leader of Tibet, to flee across the Indian frontier. 85,000 Tibetan refugees followed the Dalai Lama when China annexed Tibet in 1959. By 1998, according to the Tibetan Administration in India, the number of Tibetan refugees in India had reached more than 118,000. The Indian government conditioned the entry of any Tibetan refugees on the Dalai Lama's pledge to personally abstain from violent and political activities.

India gave Tibetan refugees arriving in the 1960s and 1970s preferential treatment compared to the other refugee communities living in India for a variety of reasons. The first group of Tibetan refugees to enter India had several exigencies that other refugee groups did not. First, a head of state of a previously independent country, the Dalai Lama, asked for shelter for himself and his people. Second, China's invasion of Tibet played a role in relations between Democratic India and Communist China and focused the world's attention on the Tibetans' plight. Third, Tibetan refugees were then, and still are, the largest body of refugees in India, and were thus too large a group to ignore. Fourth, Tibetan refugees are members of a society and culture that is eager to re-establish itself in its home territory and were viewed as only having a temporary reliance on India. As a result of these exigencies, India allowed the Dalai Lama to establish a Tibetan government-in-exile

called the Central Tibetan Administration (CTA), seated in the northern Indian city of Dharamsala, but it did not officially recognize it. In addition, although no foreigners can own property in India, the Indian government provided land and housing to establish Tibetan farming settlements. Furthermore, the Indian government granted the Tibetan refugees who entered through the 1970s Indian Residential Certificates for identification purposes, permission to work, domestic travel rights, Indian Identity Certificates, which allowed them to travel outside India (similar to a passport), and medical treatment. Although, according to Indian law, the Indian government has no obligation to assist refugees, the Indian government chooses to grant these early Tibetan refugees services and opportunities no other group enjoys.

With the increasing number of Tibetan refugees coming to India after 1980, however, the Tibetan refugee community began to place greater strain on Indian services. The government decided to grant substantially less assistance to the Tibetan refugees arriving after 1980. According to both the USCR and the International Campaign for Tibet, although India admitted Tibetan refugees into the country after 1980, the government has denied these Tibetans both Residential Certificates and Identity Certificates. The refusal to grant both the Residential and Identity Certificates creates serious consequences because employment, international travel, and naturalization hinge on possession of these documents. As a result, these rights are unattainable for the new arrivals. In addition, the Indian government refused to grant Tibetans new allotments of land, despite the fact that the Indian government admitted 25,000 Tibetans between 1986 to 1996, according to a 1997 U.S. Senate Committee Hearing on Foreign Relations. CTA argues that this has led to overpopulation, unemployment, and food shortages in the Tibetan refugee community. Furthermore, press reports have described incidents of the Indian government returning to China small groups of Tibetan refugees seeking entry into India.

The Indian government's decline in assistance appears to be a result of India's attempt to improve its relations with China and domestic political opinion. Further subsidization of the Tibetan refugee community may strain India's relations with China. For

instance, China could potentially view this assistance as Indian support for a Tibetan state, and subsequently, as -an affront to China's sovereign claim over Tibet. In addition, the retrenchment of assistance is an attempt to stem the overpopulation of Tibetan settlements. According to a 1998 country report on India by USCR, "Because India has no legal framework for determining refugee status, it deals with refugees on an *ad hoc* basis, which has led to refugees being used as 'pawns in regional geo-politics.'" Basing refugee policy on domestic or foreign policy contradicts the purpose of the Refugee Convention.

India has an important role in the treatment of refugees because of its position as a leader in South Asia, setting an example for other states in the region, and it shelters one of the largest refugee populations in the world. India's lack of clear standards for the treatment of refugee groups, however, is resulting in violations of the international norms for the treatment of refugees. Its policies are discriminatory and inequitable, even to members of the same group. Although Tibetan refugees who arrived prior to 1980 received adequate assistance from the Indian government, assistance to the Tibetan refugees who arrived after 1980 has declined greatly, forcing them to live in inhumane conditions. These inconsistent policies demonstrate that India should adopt basic standards of treatment for the refugees living inside its borders. In order for India to bring its refugee law into conformity with the international community, only improving its domestic laws is insufficient because it will continue to reject international assistance and monitoring of refugee groups. India should reform its refugee policies and accede to the Refugee Convention or its Protocol.

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